

No. 3263

United States 14
Circuit Court of Appeals
For the Ninth Circuit.

MARINE HARDWARE COMPANY, a Corporation, Libelant,
Appellant,

vs.

HALFHILL PACKING CORPORATION, a Corporation,
Claimant of the GASOLINE LAUNCH "MOUNTAINEER," Her Tackle, Apparel and Furniture,
MITCHELL MARINCOVICH, PAUL BOGDANICH
and AUGUST FELANDO, Doing Business Under the
Firm Name and Style of SAN PEDRO GROCERY and
MEAT MARKET, and BABASA BROTHERS COMPANY, a Corporation, Libelants in Intervention,
Appellees,

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

DEC 29 1922

F. D. MONCKTON,
CLERK



No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

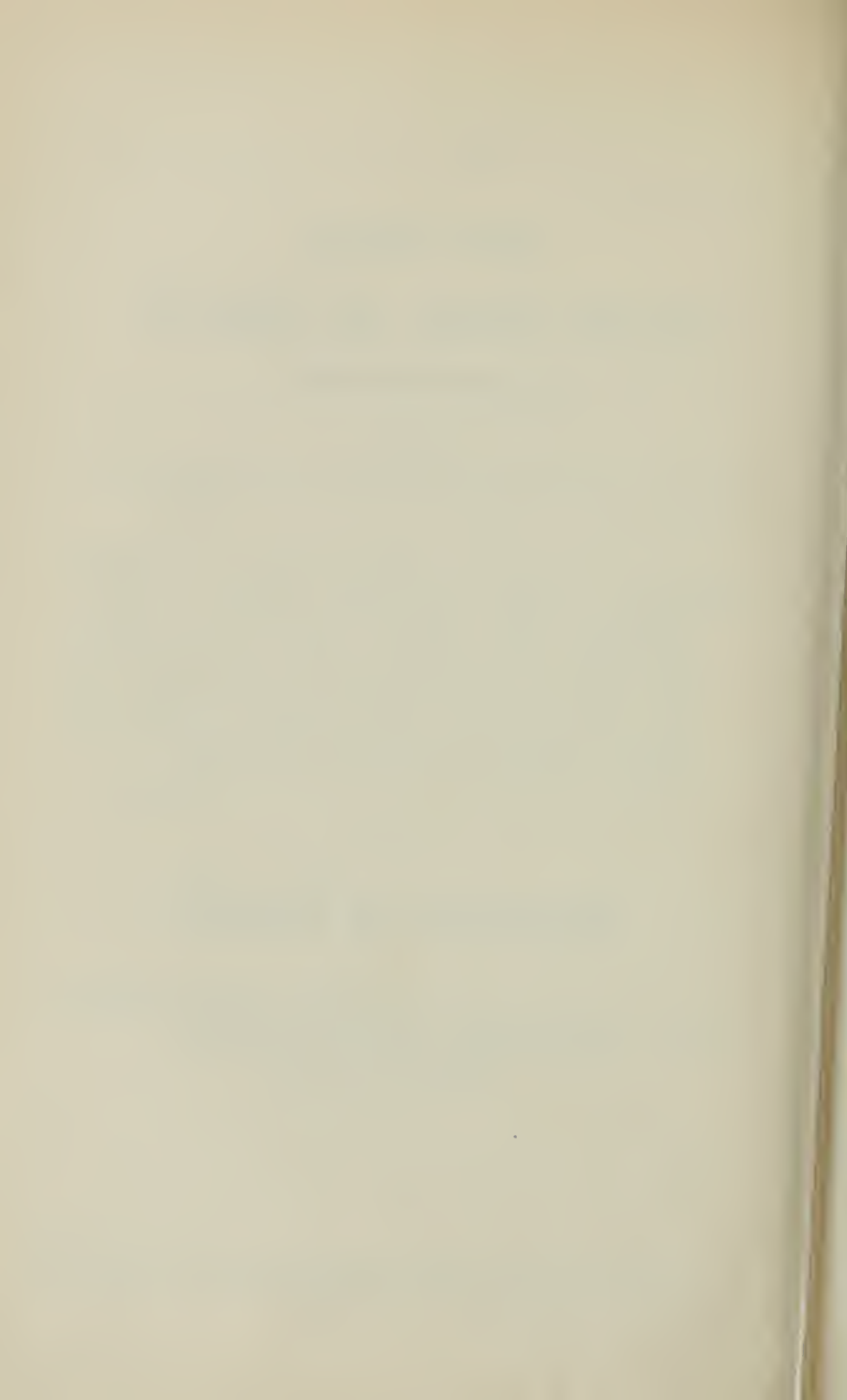
MARINE HARDWARE COMPANY, a Corporation, Libelant,
Appellant,

vs.

HALFHILL PACKING CORPORATION, a Corporation,
Claimant of the GASOLINE LAUNCH "MOUN-
TAINNEER," Her Tackle, Apparel and Furniture,
MITCHELL MARINCOVICH, PAUL BOGDANICH
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PANY, a Corporation, Libelants in Intervention,
Appellees,

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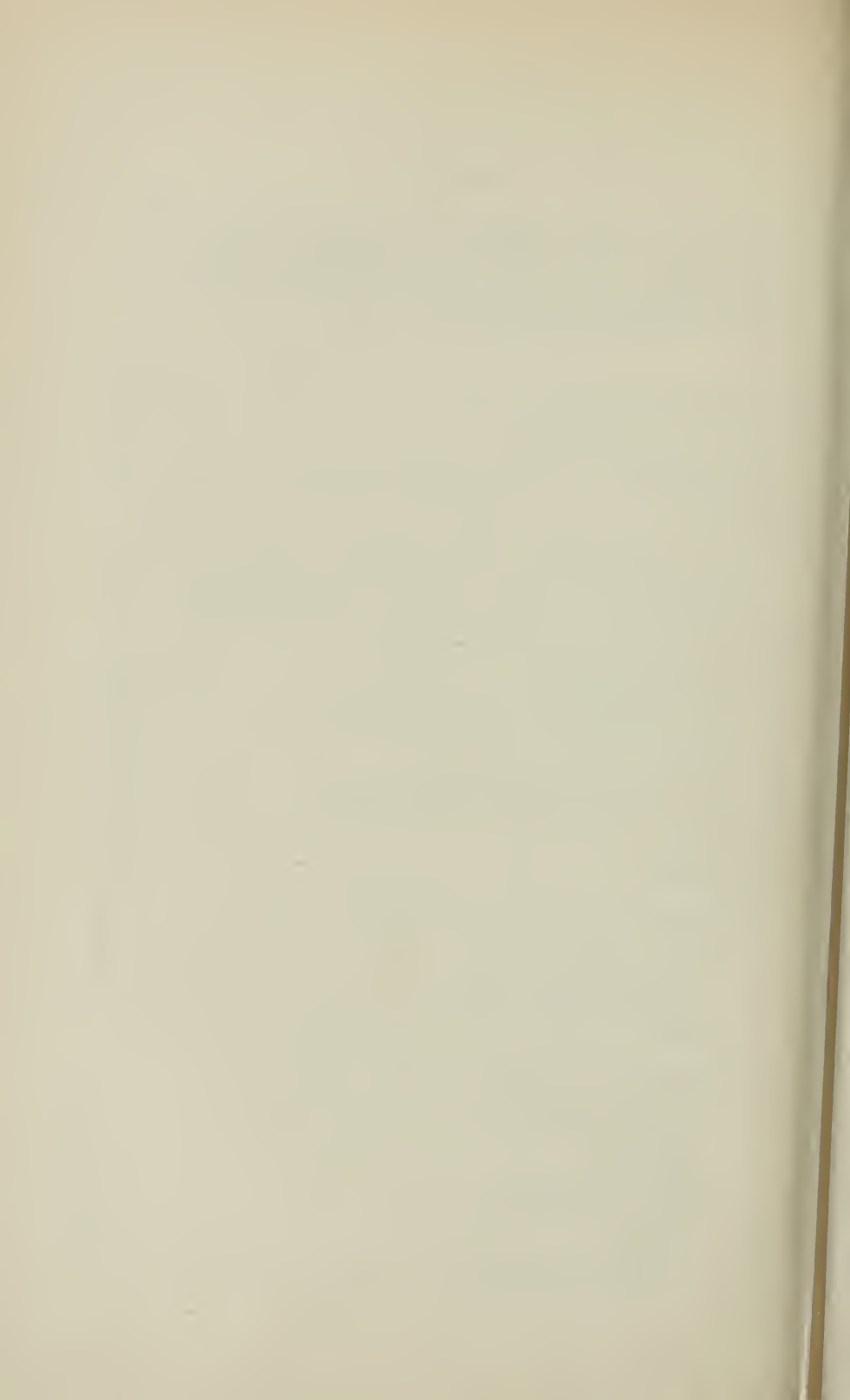
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys:

For Appellants:

LOUCKS & PHISTER, Esqs., Marine Bank
Bldg., San Pedro, California.

For Appellees:

OVERTON, LYMAN & PLUMB, Esqs.,
L. K. VERMILLE, Esq., Stock Exchange Build-
ing, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN DIVI-
SION, IN ADMIRALTY.

MARINE HARDWARE COMPANY,	:	
a corporation,	:	
	Libellant,	:
	vs.	:
GASOLINE LAUNCH "MOUN-	:	LIBEL
TAINER"	:	
	Respondent.	:

Comes now the Marine Hardware Company, a corporation, by way of libel against the Gasoline Launch "Mountaineer," her tackle, apparel, furniture, engines, etc., and against all persons having an interest in said Gasoline Launch "Mountaineer," complains as follows:

I.

That the Libellant is and was at all times herein mentioned, a corporation, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at and within the City and County of Los Angeles, State of California as a Ship Chandler.

II.

That the said Gasoline Launch "Mountaineer" is a domestic vessel, and now is owned and at all times herein mentioned was owned by some person or persons who are residents of the State of California, but who are to the libellant unknown, and who, as libellant is informed and believes, reside in the City of Los Angeles, State of California.

III.

That while said Gasoline Launch "*Mountaineer*" was in the Port of San Pedro, City of Los Angeles, District aforesaid, between the 12th day of May, 1920, and the 16th day of July, 1921, both dates inclusive, the libellant furnished materials and stores as a Ship Chandler, an itemized account of which is hereunto annexed and marked "Exhibit A," towards the equipping and furnishing of said Gasoline Launch "*Mountaineer*" at the request of the Master thereof, and at the prices in said schedule mentioned; that the charges in said account are just and reasonable, and the materials furnished were necessary and proper to equip said Launch to perform her intended voyage or voyages, and were furnished on the credit of said Gasoline Launch "*Mountaineer*."

IV.

That the materials so furnished have gone into the said Launch and have become a part thereof, and that the same amount to and are of the value of Six thousand, seven hundred and eighty-six and 14/100 dollars (\$6786.14); that the said sum has not, nor has any part thereof, been paid, except the sum of Two thousand dollars (\$2000.00), and there *no* remains wholly due, owing and unpaid to this libellant the sum of Four thousand, seven hundred and eighty-six and 14/100 dollars (\$4786.14).

V.

That all and singular the premises are true and within the Admiralty and Maritime Jurisdiction of the

	1 " Tuna Red	6.00	
	2 Qts. " "	3.30	17.30
		<hr/>	
17	2 Coils 3"—3 Ply. Purse Bine		
	247—252# @ .32½	162.18	
	4 Coils 12 th. Manila 202# @		
	.29	58.58	220.76
		<hr/>	
28	4 Fig 8 Links @ .75	3.00	
	5 Long " @ .20	1.00	
	3 Doz. 1¼" Galv. Rings @ .40	1.20	
	2—6' Sing. Pat. Blocks 1.50		
	Plus 20%	3.60	
	2# 7 Sing. Galv. Eye Blocks		
	@ .25	.50	
	1 Vise	6.50	15.80
		<hr/>	
28	By 1 Vise Credit		6.50
			<hr/>
			6736.59
	Less Credit		6.50
			<hr/>
	Forward		6730.09

[Endorsed]: ORIGINAL No. 1027 Civ DEPT.—
 IN THE DISTRICT COURT OF THE UNITED
 STATES, IN THE SOUTHERN DISTRICT OF
 CALIFORNIA SOUTHERN DIVISION IN AD-
 MIRALTY. MARINE HARDWARE COMPANY,
 a corporation, Libellant, VS. GASOLINE LAUNCH
 "MOUNTAINEER, Respondent. LIBEL. Received
 copy of the within Libel, this day of September, 1921.
 Proctors for FILED SEP 28 1921 CHAS. N.

WILLIAMS, Clerk By R S Zimmerman Deputy Clerk. Law offices LOUCKS AND PHISTER 10 Wall St. San Pedro, Calif. Telephone 1065

Southern District of California, ss.

The President of the United States of America:

To the Marshal of the United States for the Southern District of California, Greeting:

WHEREAS, a libel in rem hath been filed in (Seal) the District Court of the United States for the Southern District of California, on the 28th day of September, in the year of our Lord one thousand nine hundred and twenty-one, by Marine Hardware Company, a corporation, against the Gasoline Launch "Mountaineer," her tackle, apparel, furniture, engines, etc., and against all persons having an interest in said Gasoline Launch, in a cause of contract, civil and maritime, for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said Gasoline Launch or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said Gasoline Launch or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libellant.

You are therefore hereby Commanded to attach the said Gasoline Launch or vessel, her tackle, etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due no-

tice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Southern District of California, on the 17th day of October, A. D. 1921, at 10 o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable BENJAMIN F. BLEDSOE, Judge of said Court, at the City of Los Angeles, in the Southern District of California, this 28th day of September, in the year of our Lord one thousand nine hundred and twenty-one, and of our independence the one hundred and forty sixth.

Chas. N. Williams, *Clerk.*

By R S Zimmerman

Messrs. Loucks and Phister

Proctor for Libellant.

In obedience to the within Monition, I attached the Gasoline Launch "Mountaineer" therein described, on the 1st day of October, 1921, and have given due notice to all persons claiming the same, that this Court will, on the 17th day of October, 1921 (If that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated October 1st, 1921

C. T. WALTON, *U. S. Marshal.*

By A. S. Menick, *Deputy.*

Marshal's Civil Docket No. 4449 No. 1027 Civil
 U. S. District Court SOUTHERN DISTRICT OF
 CALIFORNIA SOUTHERN DIVISION Marine
 Hardware Co., a corporation, *vs.* Gasoline Launch
 "Mountaineer," etc. *Monition returnable* Oct. 17, 1921
 Messrs. Loucks and Phister Proctor for Libellant.
Issued Sep 28 1921 *Filed*.....19... Chas. N.
 Williams, Clerk. FILED OCT 21 1921 Chas. N.
 Williams, Clerk. By Edmund L. Smith, Deputy Clerk.
 Eq. Rule Br 497

IN THE DISTRICT COURT OF THE UNITED
 STATES, IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA,
 SOUTHERN DIVISION.

)	
MARINE HARDWARE COM-	:	
PANY, a corporation,	:	
Libellant,	:	LIBEL IN
- vs -	:	INTERVENTION
	:	OF THE
GASOLINE LAUNCH	:	HALFHILL
"MOUNTAINEER"	:	PACKING
Respondent,	:	CORPORATION,
	:	a corporation.
HALFHILL PACKING COR-	:	
PORATION, a corporation,	:	
Intervener.	:	
)	

TO THE HONORABLE DISTRICT COURT OF
 THE UNITED STATES IN AND FOR THE
 SOUTHERN DISTRICT OF CALIFORNIA,
 SOUTHERN DIVISION:

The libel in intervention of the Halfhill Packing
 Corporation, a California corporation, against the

launch Mountaineer, her tackle, apparel, and furniture and against all persons intervening for their interest, and in answer to the libel of the Marine Hardware Company, leave of court having been first obtained to file its libel in intervention alleges as follows:

I.

That said vessel has been attached by the United States Marshal under the process issued out of the above entitled Court, on the libel of the Marine Hardware Company, a corporation, in a cause of action civil and maritime and is now in the custody of the said United States Marshal.

II.

That intervener is now and at all of the times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California.

III.

That the said Gasoline Launch Mountaineer is a domestic vessel and is now within the jurisdiction of this Honorable Court and within the Southern District of California.

IV.

That on the 25th day of March, 1920, for a valuable consideration, one Epifanio Marijani, owner and master of said vessel made, executed and delivered to interveners assignor, Halfhill Tuna Packing Company, his promissory note in words and figures as follows, to-wit:

"7750.00

Tacoma, Wash. Mar. 25, 1920

On or before one year after date, without grace I promise to pay to the order of Halfhill Tuna Packing Company, Seven Thousand Seven Hundred and FiftyDollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of 7% per cent per annum from date until paid, for value received, Interest to be paid, annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note: And in case suit or action is instituted to collect this Note or any portion thereof, I promise and agree to pay, in addition to the costs and disbursements provided by statute, Fifty Dollars in like Gold Coin for Attorney's fees in said suit or action.

(Signed) Epifanio Marijani.

Due March 25th 1921

(\$1.56 U. S. Int. Revenue

At Los Angeles, Calif.

Stamps cancelled)

That at the time of the execution and delivery of said promissory note said master and owner of said vessel made, executed and delivered to said intervener's assignor, as security for the payment of said promissory note a mortgage upon that certain gasoline launch "Mountaineer" and that on the 31st day of March, 1920, said mortgage was duly recorded in Liber P. & E. 12 of mortgages folio 96 etc. in the office of the Collector of Customs of the Port of Seattle, Washington; that said port of Seattle was at the time said

mortgage was recorded the home port of said vessel and that the said Collector of Customs is the office in which said vessel was at said time duly enrolled and licensed under and by virtue of the Acts of Congress in such cases made and provided.

That thereafter and on the 16th day of March, 1921, said mortgage was duly recorded in Liber Book 1351-4 page 110 of mortgages in the office of the Collector of Customs of the Port of Los Angeles; that the port of Los Angeles is now and ever since the 15th day of March, 1921, was the home port of said vessel and the office of said Collector of Customs is the office in which said vessel was ever since said 15th day of March, 1921, and still is duly enrolled and licensed under and by virtue of the Acts of Congress in such cases made and provided.

V.

That on the 20th day of March, 1921, said Halfhill Tuna Packing Company for a valuable consideration assigned all of its right, title and interest in and to the said promissory note and mortgage to Halfhill Packing Corporation, and that said Halfhill Packing Corporation is now and ever since the 20th day of March, 1921, has been the owner and holder thereof.

VI.

That under and by virtue of the terms of said mortgage there became due and payable to said intervener on the 25th day of March, 1921, Seven thousand, seven hundred and fifty dollars (\$7,750.00) together with interest thereon at the rate of 7 per cent. (7%) per annum.

That intervener has demanded of said master and owner the payment of said sum but that he has refused to pay said sum or any part thereof and that the whole thereof remains wholly due and unpaid.

VII.

In answer to the libel of the Marine Hardware Company, intervener alleges that it has no knowledge or information sufficient to form a belief as to the allegations of the libel which sets forth an alleged sale of certain materials and supplies furnished to the gasoline launch "Mountaineer" and it therefore neither admits or denies the same but leaves the allegations thereof to be proven by the said libellant as he may be able so to do and as may be advised.

WHEREFORE intervener prays that it be the decree *if* this court that no maritime lien exists in favor of libellant and against said gasoline launch "Mountaineer" or in the event said court finds that a maritime lien exists in favor of libellant that intervener have judgment on said mortgage in the sum of Seven thousand, seven hundred and fifty dollars (\$7750.00) together with interest and that said judgment be declared a lien and charge upon said vessel superior to the lien of the Marine Hardware Company and that said vessel may be condemned and sold to pay the amount due intervener together with interest and costs and the intervener may have such other and further relief as in law and justice it may be entitled to receive.

L. K. Vermille and
Overton Lyman & Plumb

Proctors for Intervener.

SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION

ss.

H. J. HALFHILL, being duly sworn, says: That he is Vice-President of the Intervener named above; that the foregoing libel in intervention is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

H. J. Halfhill

Subscribed and sworn to before me, this 15th day of October, 1921. L. K. Vermille, Notary Public in and for the County of Los Angeles, State of California.

(Seal)

[Endorsed]: ORIGINAL. No. 1027 Civil Dept.
..... UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION MARINE HARDWARE
COMPANY, a corporation, Libellant -vs- GASOLINE
LAUNCH "MOUNTAINEER" Respondent HALF-
HILL PACKING CORPORATION a corporation,
Intervener LIBEL IN INTERVENTION OF THE
HALFHILL PACKING CORPORATION, a corpora-
tion. FILED OCT 17 1921 Chas. N. Williams, Clerk
By R S Zimmerman Deputy Clerk OVERTON,
LYMAN & PLUMB 1300 Stock Exchange Bldg. Los
Angeles, Calif. Attorneys for Intervener.

At a stated term, towit: the July, A. D., 1921, Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the fifth day of December, in the year of our Lord, One thousand nine hundred and twenty-one;

Present:

The Honorable Benjamin F. Bledsoe, District Judge.	
Marine Hardware Company, Libellant,	} No. 1027 Civ.
vs.	
The Gasoline Launch "Mountaineer," Respondent.	

This cause coming on at this time, EX PARTE, for hearing on motion for reference to special master; now, upon motion of Montgomery Phister, Esq., appearing as proctor for libellant, it is by the court ordered that this cause be referred to Stephen G. Long, U. S. Commissioner, as Special Master, for hearing and report.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

MARINE HARDWARE	)	No. 1027—Civil
COMPANY, a corporation,	:	
	:	In Admiralty
Libellant,	:	
	:	Report of United States
- vs -	:	Commissioner.
	:	
GASOLINE LAUNCH	:	
"MOUNTAINEER",	:	
	:	
Respondent,	:	
	:	FINDINGS OF FACT
	:	-----
	:	
HALFHILL PACKING	:	AND CONCLUSIONS
	:	-----
CORPORATION, a corpor-	:	
ation,	:	OF LAW.
	:	-----
Intervener.	:	
	:	
	:	
-----)	

In pursuance of an order made in the above entitled cause on the 5 day of December, 1921, by the Honorable Benjamin F. Bledsoe, Judge of the above entitled Court under Rule 44 of Admiralty Rules by which said cause was transferred and referred to Stephen G. Long, United States Commissioner to hear testimony and make and report his Findings of Fact and Conclusions of Law, all parties to the cause consenting to the order of reference:

NOW THEREFORE, I, Stephen G. Long, United States Commissioner, to whom said cause was referred do report that the above entitled cause was set down for hearing before me on the 15th day of December, 1921, and was on said day continued for further hearing on the 23rd day of December, 1921, in the Federal Building in the City of Los Angeles, California; that on said dates and at said place came the Marine Hardware Company, Libellant, and Mitchell Marincovich, Paul Bogdanich, August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, Interveners, represented by Loucks & Phister, their Proctors, Babare Brothers, a corporation, Interveners, and Babasa Brothers, a corporation, Interveners, represented by Smith & Nix, their Proctors, and Halfhill Packing Corporation, a corporation, Interveners, represented by L. K. Vermille, and Overton, Lyman & Plumb, its proctors, whereupon evidence both oral and documentary was introduced by the Libellant and by each of said interveners, and having considered said evidence and the arguments of the proctors of the various parties hereto, I do find as follows:

I.

That the Gasoline Launch "Mountaineer" was at the time of the libel herein was filed, a domestic vessel within the jurisdiction of this Honorable Court and within the Southern District of California, and that prior to the libel of the same, it was and now is owned, used and operated by one Epifanio Marijani, as a purse seine fishing boat, and that said vessel at all

times since the filing of said libel has been in the custody of the United States Marshal.

II.

That said vessel was specially constructed, designed and built to be used as a purse seine fishing vessel and that said vessel was partially constructed at Tacoma, State of Washington, and fully completed, for the purpose of making it what it was intended to be, and to enable it to enter upon the kind of business or navigation intended, at Los Angeles Harbor, California, by the Marine Hardware Company, who furnished the balance of the original equipment, to-wit: the material and equipment for the purse seine net.

III.

That between the 12th day of May, 1920, and the 18th day of June, 1920, the libellant, at the request of the owner of said vessel furnished to said vessel certain original equipment consisting of materials for the purse seine net amounting to the sum of \$6703.49, upon which said sum there has been paid the sum of \$2,000.00, leaving the balance due on said original equipment in the sum of \$4703.49. Under the weight of authority said materials so furnished are a part of the original construction and equipment of said vessel and therefore do not constitute a maritime lien. That under and by virtue of the laws of the State of California said libellant did not at the time of the filing of the libel herein have a lien on said vessel for the furnishing of said original equipment.

That between the 18th day of June, 1920, and the 18th day of July, 1921, the libellant at the request of the master and owner of said vessel furnished certain materials and supplies, consisting of miscellaneous articles of ship chandlery to said vessel; that the reasonable value of said materials and supplies is now and was at the time the same were furnished, the sum of \$78.90.

That libellant has made repeated demands upon the master and owner for the payment of said supplies but that he refused and still refuses to pay said sum or any part thereof, and that the whole thereof, to-wit: the sum of \$78.90 remains due, owing and unpaid to libellant, and that libellant has a maritime lien on said vessel therefor.

THAT IN RESPECT TO THE LIBEL IN INTERVENTION OF MITCHELL MARINCOVICH, PAUL BOGDANICH, AUGUST FELANDO, doing business under the firm name and style of SAN PEDRO GROCERY AND MEAT MARKET, AGAINST THE SAID VESSEL, I DO FIND AS FOLLOWS:

I.

That the claim of Interveners, Mitchell Marincovich, Paul Bogdanich, August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market is a claim for groceries and supplies furnished the said vessel at the request of the master and owner thereof between the 13th day of December, 1920, and the 18th day of July, 1921. That the reason-

abel value of said supplies so furnished is now, and was at the time they were furnished, the sum of \$338.09. That no part of said sum of \$338.09 has been paid, and the whole thereof remains due, owing and unpaid to said intervener, and that said intervener has a maritime lien on said vessel therefor.

IN RESPECT TO THE LIBEL IN INTERVENTION OF BABARE BROTHERS, A CORPORATION, AGAINST THE SAID VESSEL, I DO FIND AS FOLLOWS:

I.

That Babare Brothers, a corporation, had a contract for the construction of said vessel. That upon said contract there remains an unpaid balance in the sum of \$1153.30.

That said claim is for the original construction of said vessel and not a claim under a maritime contract and therefore not subject to admiralty jurisdiction. That said Babare Brothers did not at the time of the filing of the libel herein have a State lien on said vessel therefor.

IN RESPECT TO THE LIBEL IN INTERVENTION OF BABASA BROTHERS COMPANY, a corporation, AGAINST THE SAID VESSEL, I DO FIND AS FOLLOWS:

I.

That the claim of intervener, Babasa Brothers Company, a corporation, is a claim for groceries and supplies furnished to the said vessel at the request of the master and owner thereof, during the month of March,

1920. That the reasonable value of said supplies so furnished is now and was at the time they were furnished, the sum of \$481.50. That no part of said sum of \$481.50 has been paid and the whole thereof remains due, owing and unpaid to said intervener, and that said intervener is entitled to a maritime lien on said vessel therefor.

IN RESPECT TO THE LIBEL IN INTERVENTION OF HALFHILL PACKING CORPORATION AGAINST SAID VESSEL, I DO FIND AS FOLLOWS:

I.

That on the 25th day of March, 1920, for a valuable consideration, Epifanio Marijani, owner and master of said vessel made, executed and delivered to said intervener's assignnor, Halfhill Tuna Packing Company, his promissory note in the sum of \$7,750.00.

That at the time of the execution and delivery of said promissory note, said master and owner of said vessel made, executed and delivered to said intervener's assignnor, as security for the payment of said promissory note, a mortgage upon said vessel and that on the 31st day of March, 1920, said mortgage was duly recorded in Liber R. & E. of Mortgages, folio 96 etc. in the office of the Collector of Customs of the Port of Seattle, State of Washington; that said port of Seattle was, at the time said mortgage was recorded, the home port of said vessel and that the said office of the said Collector of Customs is the office in which said vessel was at said time duly enrolled and licensed

under and by virtue of the Acts of Congress in such cases made and provided.

That thereafter and on the 16th day of March, 1921, said mortgage was duly recorded in Liber Book 1351-4, page 110 of Mortgages in the office of the Collector of Customs of the Port of Los Angeles; that the Port of Los Angeles is now and ever since the 15th day of March, 1921, was the home port of said vessel and the office of said Collector of Customs is the office in which said vessel was ever since said 15th day of March, 1921, and still is duly enrolled and licensed under and by virtue of the Acts of Congress in such cases made and provided.

II.

That said note and mortgage was thereafter duly and regularly assigned by the Halfhill Tuna Packing Company, a corporation, to the Halfhill Packing Corporation, a corporation, intervener herein, and that said Halfhill Packing Corporation is now the owner and holder thereof.

That no part of the principal or interest upon said promissory note and mortgage has been paid and that there now remains due, owing and unpaid on said promissory note and mortgage to the Halfhill Packing Corporation, the sum of \$7,750.00, together with interest thereon at the rate of seven (7%) per cent. per annum from the 25th day of March, 1920.

AS CONCLUSIONS OF LAW FROM THE FOREGOING FACTS, I DO FIND AS FOLLOWS:

I.

That libellant, Marine Hardware Company, is entitled to recover judgment against the said vessel, her engines, tackle, apparel and furniture in the sum of \$78.90, and for costs of libel;

That said claim is a maritime lien against said vessel, her engines, tackle, apparel and furniture.

II.

That intervener, Mitchell Marincovich, Paul Bogdanich August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, is entitled to recover judgment against said vessel, her engines, tackle, apparel and furniture in the sum of \$338.09, together with costs of libel in intervention.

That said claim is a maritime lien against said vessel, her engines, tackle, apparel and furniture.

III.

That intervener, Babasa Brothers Company, a corporation, is entitled to recover judgment against said vessel, her engines, tackle, apparel and furniture in the sum of \$481.50, together with costs of libel in intervention.

IV.

That intervener, Halfhill Packing Corporation, is entitled to recover judgment against said vessel, her engines, tackle, apparel and furniture in the sum of \$7,750.00, together with interest thereon at the rate of seven (7%) per cent. per annum, from the 25th day of March, 1920, and for costs of libel in intervention.

V.

That the said maritime liens of Marine Hardware Company, libellant, Mitchell Marincovich, Paul Bogodanich, August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, intervener, and Babasa Brothers Company, a corporation, intervener, above described, are and each of them is superior to the lien of intervener Halfhill Packing Corporation, and the said lien of intervener, Halfhill Packing Corporation shall not be paid until all of said maritime liens together with costs and expenses have been fully satisfied and paid.

VI.

That the claim of Babare Brothers, a corporation is disallowed for the reasons herein stated.

That the portion of the libel of the Marine Hardware Company relative to the original equipment furnished to said vessel is disallowed for the reasons herein stated.

In arriving at the foregoing conclusions I have carefully considered the following authorities cited by the proctors for libellant and intervener Halfhill Packing Corporation respectively:

Libellant's authorities:

The Manhattan 46 Fed. 797

The Dredge A 217 Fed 617, and cases cited.

Intervener's authorities:

The Glenmont 32 Fed. 703.

The Glenmont 34 Fed. 402.

People)s Ferry Co. vs. Beers, 20 How. 393 15
L. ed. 961

Roach vs. Chapman, 22 How. 129, 16 L. ed. 294

Edwards vs. Elliott, 21 Wall. 532, 22 L. ed 487
at pages 491-2

The Winnebargo, 205 U. S. 354, 51 L. ed. 836
at page 840.

The Isosco, Fed. Cas. No. 7,060.

The Paradox, 61 Fed. 860

McMaster vs. One Dredge, 95 Fed. 832.

The United Shores, 193 Fed. 552.

The Dredge "A", 217 Fed. 617, at pp. 629-30

Thames Towboat Co. vs. Schooner Francis Mc-
Donald, 254 U. S. Supreme Court Reports
244.

All of which is respectfully submitted.

Dated, Los Angeles, California, January 16th, 1922.

(Seal)

Stephen G. Long

United States Commissioner.

[Endorsed:] ORIGINAL. No. 1027—Civil Dept

..... UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

MARINE HARDWARE COMPANY, a corpora-
tion, Libellant, - vs - GASOLINE LAUNCH "MOUN-
TAINEER," Respondent, HALFHILL PACKING
CORPORATION, a corporation, Intervener.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

FILED JAN 17 1922 CHAS. N. WILLIAMS,
Clerk By Edmund L Smith Deputy Clerk Overton,
Lyman & Plumb 1300 Stock Exchange Bldg. Los An-
geles, Calif. Attorneys for Intervener

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

MARINE HARDWARE :
COMPANY, a corporation, :
Libellants, :

- vs -

GASOLINE LAUNCH :
"MOUNTAINEER," :
Respondent, :

HALFHILL PACKING :
CORPORATION, a cor- :
poration, :
Intervener. :

: NOTICE OF
: SIGNING AND
: FILING OF
: UNITED STATES
: COMMISSIONER'S
: REPORT.

To MARINE HARDWARE COMPANY, a cor-
poration, Libellant, and to LOUCKS & PHISTER,
Proctors for said Libellant;

To MITCHELL MARINCOVICH, PAUL BOG-
DANICH, AUGUST FELANDO, doing business
under the firm name and style of SAN PEDRO GRO-
CERY AND MEAT MARKET, intervener, and to
LOUCKS & PHISTER, Proctors for said Intervener;

To BABASA BROTHERS COMPANY, a corporation, Intervener, and to SMITH & NIX, Proctors for said Intervener;

To BABARA BROTHERS COMPANY, a corporation, Intervener, and to SMITH & NIX, Proctors for said Intervener;

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the report of Stephen G. Long, United States Commissioner, including his findings of fact and conclusions of law in the above entitled cause, was by him signed and filed on Tuesday the 17th day of January, 1922, in the United States Clerk's office of the above entitled court.

DATED, January 17th, 1922.

L. K. Vermille

Overton Lyman & Plumb

Proctors for Intervener, Halfhill Packing Corporation.

[Endorsed]: ORIGINAL. No. 1027—Civil Dept.
..... UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MARINE HARDWARE COMPANY, a corporation, Libellant, - vs - GASOLINE LAUNCH "MOUNTAINEER," Respondent, HALFHILL PACKING CORPORATION, a corporation, Intervener. Received copy of the within notice this 19 day of Jan., 1922 Smith & Nix Loucks & Phister. Proctor.. for NOTICE OF SIGNING AND FILING OF UNITED STATES COMMISSIONER'S REPORT.

FILED JAN 25 1922 CHAS. N. WILLIAMS, Clerk
By R S Zimmerman Deputy Clerk Overton, Lyman
& Plumb 1300 Stock Exchange Bldg. Los Angeles,
Calif. Attorneys for Intervener.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE	:	
COMPANY, a corporation,	:	No. 1027
Libellant,	:	<u> </u>
	:	EXCEPTION OF
VS.	:	<u> </u>
	:	LIBELLANT,
GASOLINE LAUNCH	:	<u> </u>
"MOUNTAINEER,"	:	MARINE HARDWARE
Respondent,	:	<u> </u>
	:	COMPANY.
MITCHELL MARINCO-	:	<u> </u>
VICH, et al,	:	.
Interveners.	:	

The libellant, Marine Hardware Company, a corporation, hereby excepts to the Commissioner's Report on file herein upon the following grounds, to-wit:

I.

That the evidence is insufficient to support the Findings of the Commissioner respecting the Libel of the Marine Hardware Company, a corporation, and in particular that part of the Findings contained in Paragraph 3 of the Report beginning on Line 31 on Page 2; said finding being as follows to-wit:

"The Libellantfurnished to said vessel certain original equipment consisting of materials for the purse seine net. Under the weight of authority said materials so furnished are a part of the original construction and equipment of said vessel and therefore do not constitute a Maritime Lien. That under and by virtue of the Laws of the State of California, said Libellant did not at the time of the filing of the Libel herein have a Lien on said vessel for the furnishing of said original equipment."

Their being not sufficient evidence to support the finding that the materials so furnished are and were a part of the original equipment of the said "*Mountaineer*"; that the only evidence introduced to support said finding is contained in the cross-examination of Mr. Mariani, beginning on Page 80 and ending on Page 87 of the Transcript on file herein; That the said Mariani testified as follows, over the objection of the Libellant, to-wit:

"That he was the only master of the Boat "*Mountaineer*"; that the boat was built at Tacoma, Washington, by Barbare Brothers; that the contract of building is in evidence; that the boat was built for the fishing business, and the boat was known as a purse seine fishing boat; that it could not be used for purse seine fishing without a net; that it did not have a net on it at the time he bought it in Washington; that the boat came down from Washington under its own power, and that a net was furnished to it at San Pedro; that a purse seine fishing boat is the same thing as an

ordinary fishing boat; that it has a different winch, a big broad stem and a large platform upon it for a net."

II.

That the Commissioner erred in overruling the Libellant's objections in the following particulars, to-wit:

"Q. How is the boat constructed?"

"Mr. Phister: I object to the question as an improper cross-examination at this time."

"The Master: Objection overruled." Page 81, line 23 of transcript.

"Q. Did it have a net at the time you bought it, in Washington?"

Mr. Phister: That is objected to as incompetent, irrelevant and immaterial; it is immaterial; ~~there is~~ no pleading here setting up any defense other than the denial of our account. It is not really a denial of our account, but is simply a statement to put us on our proof, neither admitting nor denying it. It is apparent he is setting up here a special defense.

The Master: Objection overruled." Page 84, line 16 to page 85, line 18 of transcript.

"Q. As soon as you got to San Pedro you went and bought this net?"

Mr. Phister: That is objected to as incompetent, irrelevant and immaterial.

The Master: Objection overruled." Page 86, line 13 to 18 of the transcript.

III.

That the findings of fact as hereinbefore set forth

do not support the conclusion of law as set forth in said Report.

IV.

That the findings as hereinbefore set forth are not material to the issues as raised by the pleadings.

Loucks & Phister.

Proctors for Libellant, Marine Hardware Company.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE	:	
COMPANY, a corporation,	:	No. 1027
Libellant,	:	<u> </u>
	:	POINTS AND
VS.	:	<u> </u>
	:	AUTHORITIES
GASOLINE LAUNCH	:	<u> </u>
"MOUNTAINEER,"	:	ON EXCEPTIONS.
Respondent,	:	<u> </u>
	:	

All materials and supplies furnished after the vessel is completed, in the water under her own power, and ready to engage in the work for which she was intended constitutes a maritime lien enforceable in admiralty.

The Dredge A, 217 Fed. 617.

George A. Harvey, 273 Fed. 973.

North Pacific Steamship Company vs. Hall, 249

U. S. 119.

The only things held to be part of the original equipment are the hull, the engines and boilers, and the actual construction contracts.

The Paradox, 61 Fed. 860.

Peoples Ferry Company vs. Beers, 20 How. 393.

Roach vs. Chapman, 22 How, 129.

The Claimant by failure to deny that the Libellant has a maritime lien, admits the existence and merely puts the Libellant on proof as to the correctness of the amount of his claim.

The Hattie Thomas, 262 Fed. 945.

Respectively submitted:

Loucks & Phister

Proctors for Libellant.

[Endorsed]: ORIGINAL NO. 1027 DEPT.....
IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION, IN AD-
MIRALTY MARINE HARDWARE COMPANY,
a corporation, Libellant, VS. GASOLINE LAUNCH
"MOUNTAINEER" Respondent, MITCHELL MA-
RINCOVICH, et al, Interveners. EXCEPTION OF
LIBELLANT MARINE HARDWARE COMPANY.
FILED JAN 27 1922 CHAS. N. WILLIAMS, Clerk,
By Edmund L Smith Deputy Clerk Law offices
LOUCKS & PHISTER MARINE BANK BUILD-
ING SAN PEDRO CALIFORNIA Telephone 1065

At a stated term, towit: the July, A. D., 1922, Term
of the District Court of the United States of America,
within and for the Southern Division of the Southern
District of California, held at the Court Room thereof,

in the City of Los Angeles, on Wednesday, the Second day of August, in the year of our Lord One thousand nine hundred and twenty-two; Present:

The Honorable Benjamin F. Bledsoe, District Judge.		
Marine Hardware Company, a cor-)	
poration,)	
	)	No. 1027 Civil.
Libellant,)	
vs.)	
Halfhill Packing Corporation,)	
Intervenor.)	

This cause coming on at this time ex parte; now, good cause appearing therefor, it is by the court ordered that exceptions to Special Master's Report filed herein be overruled and that said Report be and the same is hereby confirmed in accordance with memorandum opinion filed herein.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

MARINE HARDWARE :	
COMPANY, a corporation, :	
Libellant, :	
:	
- vs - :	
:	
GASOLINE LAUNCH .	FINAL DECREE
"MOUNTAINEER," :	
Respondent, :	<u>No. 1027—Civil</u>
:	
HALFHILL PACKING :	
CORPORATION, a cor- :	
poration, :	
Intervener. :	
:	

At a stated term of the District Court of the United

States of America, in and for the Southern District of California, Southern Division, held at the Court Room in the Federal Building in the City of Los Angeles, California, on the 18th day of August, 1922;

Present, Honorable Oscar A. Trippet, District Judge;

It appearing to this Court that a libel was filed by the Marine Hardware Company, a corporation, against the Gasoline Launch "Mountaineer," her tackle, apparel, and furniture on the 28th day of September, 1921, alleging among other things that said Marine Hardware Company had furnished certain materials and supplies to said launch; and that subsequent to the filing of said libel, to-wit: on the 17th day of October, 1921, the Halfhill Packing Corporation, a corporation, filed a libel in intervention, alleging that it was the owner of a mortgage against said vessel in the principal sum of \$7,750.00;

And it further appearing that Mitchell Marincovich, Paul Bogdanich and August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, also filed a libel in intervention against said vessel, her tackle, apparel and furniture, alleging that they had furnished certain groceries and supplies to said vessel;

And it further appearing that Babasa Brothers Company, a corporation, also filed a libel in intervention against said vessel, her tackle, apparel and furniture, alleging that said corporation had furnished certain groceries and supplies to said vessel;

And it further appearing Barbara Brothers Company, a corporation, also filed a libel in intervention

against said vessel, her tackle, apparel and furniture, alleging that said corporation had furnished certain groceries and supplies to said vessel;

And it further appearing that said Gasoline Launch "Mountaineer" was on or about the 1st day of October, 1921, seized by the United States Marshall, under process issued in the above entitled action, and has ever since remained and now is in the custody of this Honorable Court;

And the said Marshall having returned on the process issued in the above entitled cause that he had attached said vessel, her tackle, apparel and furniture, and given due notice to all persons claiming the same that this court would on the 17th day of October, 1921, proceed to the trial and condemnation of said vessel, her tackle, apparel and furniture should no claim be interposed for the same;

And the default of all persons other than the interveners having been duly entered;

And it further appearing that in pursuance of an order made on the 5th day of December, 1921, said cause was transferred and referred to Stephen G. Long, United States Commissioner, to hear testimony and make report, all parties having consented to said order of reference;

And this cause having on the 15th day of December, 1921, come regularly on to be heard in the pleadings before the said United States Commissioner and witnesses having been examined and evidence offered on behalf of the several parties, and the United States

Commissioner having on the 17th day of January, 1922, signed and filed his report herein, including his findings of fact and conclusions of law;

And exceptions to said Commissioner's report having been filed and come on regularly for hearing before this Court;

Now on motion of Overton, Lyman & Plumb, one of the proctors for intervener, Halfhill Packing Corporation;

IT IS ORDERED that the report of the said United States Commissioner be and the same is hereby in all particulars confirmed;

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libellant, Marine Hardware Company, a corporation, have judgment against said launch "Mountaineer," her tackle, apparel and furniture in the sum of \$78.90; for United States Commissioner's fees in the sum of \$16.65; for proctors' docket fee in the sum of \$20.00; and the further sum of \$328.55, costs to be taxed by the clerk of this court, making in all the sum of \$444.10;

That the interveners, Mitchell Marincovich, Paul Bogdanich, and August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, have judgment against said launch "Mountaineer," her tackle, apparel and furniture, for the sum of \$338.09; for United States Commissioner's fees in the sum of \$—; for proctors' docket fee in the sum of \$20.00; and for the further sum of \$—, costs to be taxed by the clerk of this court, making in all the sum of \$358.09;

That the intervener, Babasa Brothers Company, a corporation, have judgment against said launch "Mountaineer," her tackle, apparel and furniture, for the sum of \$481.50; for United States Commissioner's fees in the sum of \$——; for proctors' docket fee in the sum of \$20.00; and for the further sum of \$7/40, costs to be taxed by the clerk of this court, making in all the sum of \$508/90;

That the intervener, Halfhill Packing Corporation, a corporation, have judgment against said launch "Mountaineer," her tackle, apparel and furniture, for the sum of \$7,750.00, together with interest thereon at the rate of seven (7%) per cent. per annum from the 25th day of March, 1920; for United States Commissioner's fees in the sum of \$16/65; for proctors' docket fee in the sum of \$20.00; and for the further sum of \$49/45, costs to be taxed by the clerk of this court, making in all the sum of \$9133/65;

That the judgments in favor of Marine Hardware Company, a corporation, Mitchell Marincovich, Paul Bogdanich and August Felando, doing business under the firm name and style of San Pedro Grocery and Meat Market, and Babasa Brothers Company, a corporation, are superior to and are to be satisfied first in full, together with proctors' docket fees, costs and expenses, before anything is paid to intervener, Halfhill Packing Corporation, a corporation, on their judgment against said vessel;

That the intervener, Barbara Brothers Company, a corporation, have and recover nothing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said gasoline launch "Mountaineer" be condemned and sold according to law and practice in such cases made and provided, and that a venditioni exponas issue accordingly; that the proceeds of such sale be paid by the Marshall to the Clerk of this Court, to be by the Clerk put into the registry of this Court to be disposed of according to law and this decree.

DATED, Los Angeles, California, August 14, 1922.

Trippet

JUDGE.

APPROVED AS TO FORM.

Loucks & Phister

Proctors for Libellant, and for interveners, Michell
Marincovich et al.

Smith and Nix

by Lloyd S Nix

Proctors for interveners, Babasa Brothers Company, a corporation, and Babara Brothers Company, a corporation.

Decree entered and recorded Aug 18 1922 CHAS. N. WILLIAMS, Clerk. By Edmund L. Smith Deputy Clerk.

[Endorsed!: ORIGINAL *No. 1027 Civil Dept.*
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION MARINE HARDWARE COMPANY, a corporation, Libellant - vs - GASOLINE LAUNCH "MOUNTAINEER," Respondent, HALFHILL

PACKING CORPORATION, a corporation, Intervener. FINAL DECREE FILED AUG 18 1922 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy OVERTON, LYMAN & PLUMB 1300 STOCK EXCHANGE BLDG. LOS ANGELES, CALIF. Attorneys for intervener

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

Marine Hardware Company, a corpora-)	
tion,)	
	)	Libellant,
)	
vs.)	
Gasoline Launch "Mountaineer,"	)	1027 Civil
	)	Respondent.
Halfhill Packing Corporation, a corpora-)	
tion,)	
	)	Intervenor.

.....

Messrs. Loucks & Phister of San Pedro, Cal., Proctors for Libellant.

Messrs. Overton, Lyman & Plumb of Los Angeles, Cal., Proctors for Intervenor Halfhill Packing Corporation.

Messrs. Hunsaker, Britt & Cosgrove of Los Angeles, Cal., Amici Curiae.

MEMORANDUM OPINION.

Bledsoe, District Judge:—This cause is before the court upon exceptions taken by the above named libel-

lant to the report of the Special Master to whom the matters in issue were referred.

Among other things, the Special Master found with respect to the claim of libellants for the purse seine furnished to the Mountaineer, "that said vessel (The Mountaineer) was specially constructed, designed and built to be used as a purse seine fishing vessel and that said vessel was partially constructed at Tacoma, State of Washington and fully completed for the purpose of making it what it was intended to be and to enable it to enter upon the kind of business or navigation intended at Los Angeles Harbor, California by the Marine Hardware Company who furnished the balance of the original equipment, to-wit, the materials and equipment for the purse seine net." With respect to the asserted lien as for such purse seine net, the Commissioner reported that the contract for the same was non-maritime in nature and that in consequence there was no lien of which the United States District Court, sitting in Admiralty, had jurisdiction. No exception seems to have been taken to the finding hereinabove specially quoted. Assuming the exceptions made to cover the point, however, I am persuaded that the conclusion of the Commissioner is correct. The contract under which the vessel was originally constructed as set out in the claim of Barbare Brothers, intervenors, shows that the agreement was that the Mountaineer should be constructed for the Halfhill Packing Corporation and that it should be "one purse seine boat," etc. The contract and specifications, however, did not

provide for the furnishing by the contractor of the purse seine. It is apparent, therefore, that the boat was originally constructed as and for a purse seine fishing vessel and it seems clear that such a vessel is constructed in a matter substantially different from any other vessel. However that may be, it seems to be determined definitely by reason of a decision of the Supreme Court of the United States in *Thames Towboat Co. vs. The Schooner Francis McDonald*, 254 U. S. 242, that all agreements made "after the hull is in the water, for the work and material necessary to consummate a partial construction and bring the vessel into condition to function as intended," are not maritime and therefore do not come within the jurisdiction of the Admiralty Court. In the course of the opinion, it is said that *that* materials in controversy were furnished after the schooner was launched "but while yet not sufficiently advanced to discharge the functions for which intended" and because of this feature it was held that admiralty had no jurisdiction of the lien asserted with respect to such materials.

The language above quoted is taken from the *Iosco*, 7060 Fed. Cases in which a similar ruling was had. The decision also quotes with approval other federal cases among which is the *Glenmont*, 32 Fed. 703, which case was later approved by the Circuit Court in 34 Fed. 402 and in which it was held that the asserted lien under consideration had to do with materials which were furnished and were necessary "according to the original design." * * * "The original construction

it to enter upon the kind of business or navigation intended is a part of the 'building' of the vessel. This is the clear weight of authority."

In my judgment these decisions cited with approval by the Supreme Court of the United States, amply sustain the judgment and ruling of the Commissioner herein and because of that the exceptions hereto are overruled and his report is confirmed.

August 2, 1922.

[Endorsed] No. 1027 Civ. IN THE DISTRICT COURT OF THE UNITED STATES for the South. of Calif. Marine Hardware Co a corp. vs. Gas. Launch "Mountaineer" Memo. Opinion Filed Aug. 2—1922 Chas. N. Williams, Clerk, By Edmund L. Smith, Deputy.

of the boat contemplated all of the materials furnished to make the vessel serviceable from the beginning and no maritime lien exists." In the Paradox, 61 Fed. 860, also cited with approval by the United States Supreme Court and therefore presumably affirmed as to the language used and decision rendered, it was said: "When the vessel is completed for the purpose intended, then the vessel is 'built' and not till then; * * * and whatever is supplied to such a vessel for the purpose of making it what it was intended to be, and to enable

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE COM-)	
PANY, a corporation,)	
Libellant and Appellant,)	
)	
vs)	
GASOLINE LAUNCH "MOUN-	)	ASSIGNMENTS
TAINER"	)	OF ERROR ON
	)	APPEAL.
Respondent,)	
)	
HALFHILL PACKING COR-)	
PORATION, a corporation,)	
Claimant and respondent.)	
)	

The Libellant and appellant herein hereby assigns error to the decree of the District Court of the United States for the Southern District of California in the above entitled cause in the following particulars:

1. In that the exceptions of the libellant to the report of the Special Master herein were overruled; and appellant relies upon and assigns as error each of the causes of exception set forth more particularly in its exceptions to said report of the said Special Master.

2. In that the Court erred in not giving judgment to the libellant herein for the full sum of Four thousand seven hundred three and 49/100 (\$4703.49) Dollars.

3. In that the Court erred in not decreeing that the libellant was entitled to a Maritime Lien against the

Gasoline Launch "Mountaineer" for the full sum of Four thousand seven hundred three and 49/100 (\$4703.49) Dollars, and in not decreeing that said sum be paid out from the Registry of the Court to the said libellant upon a sale of the said vessel.

4. In that the Court erred in finding that the materials furnished by the libellant, Marine Hardware Company, a corporation, were a part of the original construction and equipment of the said Gasoline Launch "Mountaineer."

5. In that by its final decree the Court did not decree that the Libellant have and recover of and from the said Gasoline Launch "Mountaineer" the sum of Four Thousand Seven Hundred eighty two and 39/100 (\$4782.39) Dollars, and that upon a sale of said vessel by the Marshal that said sum should be paid from the proceeds of such sale to the said Libellant, together with that of the other maritime lien claimants.

6. In that the Court erred in decreeing that the Halfhill Packing Corporation, a corporation, should recover judgment against the said vessel in the sum of Seven Thousand Five Hundred and no/100 (\$7500.00) Dollars.

7. In that the Special Master and the Court overruled the objections interposed to the following questions by the libellant:

Questions by Mr. Vermille on cross-examination of the witness Epifanio Mariani.

Q. How is the boat constructed?

Q. Could you go out and fish with this boat and use it as a Purse Seine boat without a net?

Q. Could you have used the boat for what it was built without a net?

Q. Did it have a net on it at the time you bought it in Washington?

Q. As soon as you got to San Pedro you went and got this net?

Q. It has a different kind of winch on it hasn't it?
Dated this 18th day of October, 1922.

LOUCKS & PHISTER

By Montgomery Phister.

Proctors for Appellant.

[Endorsed]: No. 1027. IN THE United States District Court Southern District of California Southern Division MARINE HARDWARE COMPANY, a corporation, *vs.* GASOLINE LAUNCH "MOUNTAINEER. ASSIGNMENT OF ERROR. *Received copy of the within assignments this 19 day of October 1922* A. L. Baldwin Smith & Nix. Overton Lyman & Plumb *Attorneys* for respondents. Filed Oct 25 1922 Chas. N. Williams, Clerk. By L. J. Cordes Deputy LAW OFFICES LOUCKS & PHISTER MARINE BANK BUILDING SAN PEDRO, CALIFORNIA. Attorneys for appellant.

C. E. TAYLOR, .

called as a witness on behalf of libelant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PHISTER:

Q Please state your name.

A C. E. Taylor.

Q You are secretary of the Marine Hardware Company, the libelant in this proceeding?

A Yes, sir.

Q You have general supervision of the books of the Marine Hardware Company?

A I do.

Q Are you acquainted with the boat "Mountaineer" and the owner of that boat?

A Yes.

Q I show you a sheet of paper and ask you what that is.

A That is the ledger account against the boat "Mountaineer."

Q That is taken from your ledger, is it?

A Yes, sir.

Q And is a part of your bookkeeping system?

A A part of our ledger.

Q Does that show the correct amount due from the boat "Mountaineer" to the Marine Hardware Company?

A Yes. There is an item of interest in there, though, that was not put in on the bill. When we made our libel we didn't add any interest.

Q That amount corresponds with the amount alleged in your libel?

A Yes, out side of the item of interest.

MR. VERMILLE: We would like to object to the offer of that in evidence on the ground that they have not proved delivery as yet to the boat. They have not established any claim.

MR. PHISTER: That is true.

THE MASTER: The objection will be overruled, subject to a motion to strike out in the event it is not shown. It will be received and marked Libelant's Exhibit No. 1.

Q BY MR. PHISTER: I show you a paper and ask you if you recognize that signature (handing paper to witness).

A Yes; that is Mariana's signature.

Q He is the owner of the boat "Mountaineer"?

A Yes, sir.

Q And what was the consideration for that note?

A That was given as an evidence note on account of the boat. We didn't waive any liens against the boat on that.

Q What was the nature of the charges on that account that has just been submitted?

A Well, it is to draw interest for 60 days.

Q No; I mean what was it sold and delivered for—items of hardware supplies?

A Yes. There were nets and corks and things like that.

Q Different things that go in to make up supplies for the boat?

A Yes, for fishing.

Q Were things actually delivered to the boat "Mountaineer", so far as you know?

A Yes, sir, so far as I know they were.

Q Has any of that amount been paid?

A Well, on the original amount there have been some payments made, as the ledger sheet shows.

Q But not other than the ledger sheet shows?

A No.

Q Amounting to a balance of \$4,852.60, with interest at six per cent from - -

A Well, there is an item of \$71 in that note there.

Q With interest from October 19, 1920. That is the amount due and unpaid from the boat "Mountaineer" - -

A Yes.

Q Was that stuff sold on credit to the "Mountaineer"?

A Yes, sir.

Q And solely on the credit of the launch "Mountaineer"?

A Yes, sir.

MR. OVERTON: That is objected to as calling for a conclusion of the witness.

THE MASTER: The objection is sustained.

Q BY MR. PHISTER: You expect to get your payment out of the boat?

MR. OVERTON: We object to that as calling for a conclusion of the witness.

A We certainly do. That is, we expect the boat to be security for the payment.

MR. OVERTON: We object to it for the same reason.

THE MASTER: Do you move to strike it out?

MR. OVERTON: We move to strike it out.

THE MASTER: I will deny the motion. Did you offer this in evidence?

MR. PHISTER: Well, no, I want to withdraw it, because we don't want to lose it. I will offer it with a stipulation that it may be withdrawn. That is the one to which the objection was made that no foundation had been laid.

THE MASTER: Are you through with this witness.

MR. PHISTER: Yes.

THE MASTER: You may cross-examine.

MR. VERMILLE: We would like to ask permission to recall the witness later on for cross-examination.

MR. OVERTON: It may not be necessary to.

THE MASTER: I want to ask a few questions in regard to this matter. Let me see that paper that was offered.

MR. VERMILLE: That was not offered, Your Honor. The original entry was the only thing offered in evidence.

THE MASTER: This is not the paper on which you examined the witness here a few moments ago, is it?

MR. PHISTER: No. The one you have in your hand is the one.

Q BY THE MASTER: Does the sum stated in this note of October 19, 1920, include the items of this book account?

A In full. It includes that \$71 interest, I believe, there that we figured was due up to the time this note was taken, from the time the net was delivered.

Q It includes all of these items and a balance besides?

A No; it is exactly the same as the ledger, though. It is the difference between the two sides of the ledger sheets.

THE MASTER: That is all. This is not offered in evidence, as I understand.

MR. PHISTER: Yes, that is offered in evidence.

THE MASTER: It will be received and marked Libelant's Exhibit No. 2.

MR. PHISTER: We offer that for the purpose of showing the amount of the account, that is all.

That is all.

THE MASTER: And you wish to recall him for cross-examination later.

ROGER CLARKE,

a witness called on behalf of the Libelant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PHISTER:

Q Please state your name.

A Roger Clarke.

Q You were an employe of the Marine Hardware Company during 1920 and 1921?

A I was; up until June, 1921.

Q Are you familiar with the business of the Marine Hardware in respect to dealing with boats?

A I am.

Q And in respect to delivery of merchandise to boats?

A Yes, sir, I am.

Q What is that custom?

MR. VERMILLE: We object to what the custom is. That has nothing to do with the case.

MR. PHISTER: It is merely a method of showing delivery, that is all.

THE MASTER: Well, what was done in this case is the question. I will sustain the objection.

MR. PHISTER: I am simply trying to show that in their general course of business whenever any deliveries are made to a boat they simply take the signature of the master of the boat, and whenever that signature appears upon their original sales slips that particular item was delivered to the boat. Then I am going to show these sales slips which were signed by the master of the boat. That was my purpose in proving the custom.

THE MASTER: Well, I will sustain the objection, but if you want to reframe the question it can be answered.

MR. PHISTER: I will withdraw the question and ask it in a little different form.

THE MASTER: What he did in this case.

MR. PHISTER: Well, he was not the actual person in this case, of course, that made all the deliveries.

Q Now, Mr. Clarke, I show you a slip of paper and ask you if you know what that is (handing paper to witness)?

A This is the charge ticket for a bill of goods for the boat "Mountaineer."

Q Is that your handwriting on there?

A It is. I made the charge ticket.

Q Did you deliver those goods to the boat?

A I made the delivery of this order.

Q Do you recollect specifically of actually delivering that aboard the boat?

A I do.

Q I show you this one (handing paper to witness). What is that?

MR. OVERTON: Let us take these one at a time.

MR. PHISTER: All right.

A Well, this is a duplicate of the other one.

Q That is a duplicate of this one?

A That is the duplicate bearing the signature of the captain when we made delivery to the boat.

Q You actually delivered those articles aboard the boat?

A Yes, sir.

Q And on the order of the master?

A Yes, sir.

THE MASTER: How are you going to identify that for the reporter?

MR. PHISTER: Well, I will offer this in evidence in this suit. This is headed "Marine Hardware Company, Inc.", Ship Chandlery, Hardware, Paints and Oils; 509 Beacon Street, San Pedro, Cal., 6/14/1920. Sold to Bt 'Mountaineer'. Address E. Mariana."

MR. OVERTON: We can save you a good deal of time on that. Just let us glance over those, and I have no doubt these are all the regular form bills or slips of theirs, and then we can identify them as we go along by numbers.

MR. PHISTER: Yes.

MR. OVERTON: (Examining slips) These are all your slips, are they?

VOICE IN AUDIENCE: Yes.

MR. OVERTON: Let us identify each slip as we go along by the number.

THE WITNESS: This particular slip bears No. 1065.

MR. OVERTON: Is that the one you asked him about a few minutes ago?

MR. PHISTER: Yes; that is the one he has identified and said it was his handwriting, and that he personally delivered the goods aboard the boat "Mountaineer." Is that correct?

THE WITNESS: That is correct.

Q BY MR. PHISTER: And you took the order from the master of the boat?

A I made out the charge for it also.

MR. PHISTER: I offer that in evidence.

THE MASTER: It will be received and marked Libelant's Exhibit No. 3.

Q BY MR. PHISTER: I show you another one marked the same way and headed No. 1064. Do you recognize that?

A This is a charge ticket for nets furnished to the boat "Mountaineer."

Q Is that your handwriting on that one too?

A It is. Direct to the ship.

Q How did you do it?

A The net was in storage in the warehouse of the Outer Harbor Dock & Wharf Company, and the boat was brought alongside the dock and the net was taken alongside the dock and put right on board the boat.

Q You supervised it personally?

A I helped them make the tackle fast and fasten it to the port.

Q And you were at that time supervising the sale of --

A I had charge of the fishermens accounts and business.

MR. PHISTER: I offer this as Libelant' Exhibit No. 4. The amount is \$9,358.03; the date of it 6/14/20.

THE MASTER: It will be received and marked Libelant's Exhibit No. 4.

MR. PHISTER: The amount, 1065, by the way, is \$1,018.05. I think you can identify all these by this account here.

Q Now I show you this one and ask you if you recognize that signature down there (indicating).

A That is the signature of E. Mariana.

Q The master and owner of the boat "Mountaineer"?

A It is.

Q Were those supplies delivered on board the boat "Mountaineer"?

A The only way I would be able to say would be the signature on the delivery slip. That is the only way I could say that.

Q How do you know that there was a delivery slip on that?

A There is another copy of this, which is the original copy on file, the delivery slip having been given with the goods and signed for by the owner of the boat, which was moored at this time in the San Pedro Lumber yard.

Q Now this particular slip bears no number, by the way, but it is in the amount of \$17.30.

A That is June 16.

MR. OVERTON: Why not mark something on the top of it?

MR. PHISTER: Well, I will put, right in there where it says "No", No. 1.

MR. OVERTON: Yes.

MR. PHISTER: I offer this as Libellant's Exhibit No. 5.

Q Do you recognize that signature?

A That is the signature of E. Mariana.

Q That is the same sort of sales slip as the other bearing No. 1509; and the amount of it is \$220.76. Could you say that was delivered on board the "Mountaineer" too?

A Only by the signature of delivery, where it is marked "Received by" and signed by Mariana.

Q And that is only done where it is delivered on board the boat by order of the master?

A Yes.

MR. PHISTER: I offer that in evidence as Libellant's Exhibit No. 6.

Q I show you another one. Do you recognize that signature on there? This is the same form and bears No. 623.

A It was signed on delivery by E. Mariana.

Q That was delivered on board the "Mountaineer" at the order of the owner or master?

A The only way we have of proving it is the receipt by the captain.

Q And when that is marked that way you know it was delivered at the boat?

A According to our delivery system that is signed as it goes aboard the ship.

Q And only at that time?

A Yes.

Q I show you another slip headed the same, bearing No. 607, \$4.60, with a name signed to it. Do you recognize that name?

A I recognize it as E. Mariana's signature.

Q Was that delivered on board the boat "Mountaineer" on the order of the master?

A It was receipted for by Mariana, which is our way of - -

Q In accordance with the same custom as the others?

A Yes, of proving the delivery to the ship.

MR. PHISTER: That is offered as Exhibit 8.

THE MASTER: It will be received.

Q BY MR. PHISTER: I show you another one on the same form, bearing No. 1058. Do you recognize that signature on there?

A It is the signature of E. Mariana.

Q Will you testify that that also was delivered on board the "Mountaineer" at the order of the master, E. Mariana?

A According to our regular custom of delivery, it is the signature, having been received of E. Mariana --

Q That means that that was delivered on board that boat?

A Yes.

MR. PHISTER: We offer this as Exhibit 9.

Q I show you another one, of the same heading, No. 1070, \$4.10. Do you recognize that signature?

A It is the signature of E. Mariana.

Q The master and owner of the boat "Mountaineer"?

A Yes.

Q And were the goods on there named delivered on board the boat "Mountaineer" at the request of the master of the boat? Can you tell that by the signature?

A E. Mariana is signed as having received it, and the custom was to have it signed at the boat.

Q Therefore it must have been delivered on board the boat at his order?

MR. VERMILLE: We object to that, your Honor. That is all custom.

THE MASTER: What is it you object to?

MR. VERMILLE: In all these last accounts they have not proved delivery, but what their custom amounts to.

THE MASTER: Well, they have offered this as evidence of delivery. It was the custom of theirs to require the signature of the master when goods were delivered.

MR. PHISTER: He has testified that they required the signature of the master when goods were delivered on board the boat, and that is the only time they required the signature on these slips, and then we introduce the sales slips to show that each one of those was actually delivered on board the boat.

THE MASTER: It is a kind of secondary evidence.

MR. PHISTER: Well, it is the best evidence possible without bringing up each particular delivery boy that actually made the particular delivery.

THE MASTER: You will have to have a foundation for introducing such evidence.

MR. PHISTER: Well, no further foundation could be laid.

THE MASTER: I will receive it at this time subject to a motion to strike it out if it is not properly connected up. Do the little slips show who delivered the goods?

MR. PHISTER: They do not; no.

Q These slips don't show who delivery was made by?

A The signature on the slip would indicate that the goods had been received at the ship's side, or on board the ship by Mariana. All the rest of those slips, that is all they would prove. You might put them in all together if you like; they are all the same. We couldn't actually prove the delivery other than by the signature of the captain on the rest of them.

MR. PHISTER: May it be stipulated that they all go in under the same designation, subject to the same objection, with the understanding - -

MR. VERMILLE: Certainly.

MR. PHISTER: - - that that signature being on each of them is identified as the signature of the owner and master of the boat "Mountaineer"?

MR. VERMILLE: Well, we cannot stipulate to that, because we do not know.

MR. OVERTON: Let them all go in subject to the motion to strike out.

MR. VERMILLE: Yes.

THE MASTER: Yes.

MR. PHISTER: All right.

Q You have looked over all of these, have you?

A Yes.

Q They all bear the signature of - -

A Yes, there is one or two of them that haven't any signature.

MR. PHISTER: There is one for \$17.30 that doesn't have. We will cut that out.

Q Is that the signature up there? I don't know whether it is or not (indicating).

A It is not Mariana's signature; it is signed with a cross, by somebody for him.

Q All the rest of these have been signed by Mariana. What is that one (exhibiting)?

A That one is signed by Stephen Marincovich.

Q Who was he?

A He was probably one of the crew on the boat.

Q Now these slips I show you here, bearing the same heading, numbered 978, 918, 1349, 2269 and 1003, all are delivery slips of goods delivered aboard the "Mountaineer"; is that correct?

A Yes.

Q And each one of these slips is signed by E. Mariana?

A They are.

Q And because he has signed them you know the goods were delivered aboard the boat "Mountaineer" at the order of the Master; is that correct? That is, in accordance with the custom of your business?

A Yes.

Q Now is there any way to tell from any of those slips that have been introduced in evidence who actually delivered the goods aboard the boat other than the first two introduced in evidence which you recognize as your own handwriting and recall having delivered personally?

A I am not able to say.

Q Is there any system you have to determine who actually delivered the goods? How many men make

delivery of goods for the Marine Hardware Company to these boats?

A They usually employ from three to four men.

Q And do those men change very often?

A Not often.

Q They are truck drivers?

A Well, two of them are regular truck drivers. The other men worked in the store, and also part of the time on deliveries.

Q And you have no method of knowing which one of those three or four men actually made the delivery aboard this particular boat?

A I don't know about the delivery of any of them except the items which were delivered to the boat on June 14, which I personally made.

Q And the others there is no way that you know of determining who made the deliveries?

A No.

Q Are any instructions given to the delivery men with respect to obtaining signatures upon delivery?

MR. OVERTON: We object to that as hearsay.

THE MASTER: Well, if he knows the fact.

MR. VERMILLE: He is going back to custom again, your Honor.

THE MASTER: I will overrule the objection.

A The delivery men are instructed at all times to obtain the signature or to bring the goods back to the store.

Q BY MR. PHISTER: At the time it is delivered aboard the boat?

A Yes.

Q And that is the only time you take the signature, and that is the only time he is instructed to get a signature?

A On small purchases which are carried out of the store, something probably light in weight, the signature is given at the store and the goods -- very small articles -- are oftentimes carried to the ship.

Q By the master of the boat himself?

A Yes.

Q But they are only delivered to the master?

A Yes, to the master or --

Q Do you know whether or not this fellow Mariana, or whatever his name is, owned any other boat than the "Mountaineer"?

A I don't know of any other.

Q That he might have owned?

A No.

Q BY THE MASTER: Do you know of your own knowledge that he was master of this boat the "Mountaineer"?

A I do.

Q BY MR. PHISTER: All those goods were delivered at the port of San Pedro?

A They were.

Q In the city of Los Angeles; and were delivered on the credit of the boat. You looked to the boat for payment -- that is, the Marine Hardware Company?

A We did.

MR. PHISTER: That is all.

THE MASTER: Cross-examine.

MR. VERMILLE: Now if your Honor please, so as to get at the facts, we would like to find just exactly what was delivered to the boat. This witness does not know personally.

CROSS-EXAMINATION

BY MR. VERMILLE:

Q We will take the first account, No. 1065, and show this to the witness and ask him to examine the account and state what he knows about the actual delivery of each item thereon to the customer -- the "Mountaineer." This is Exhibit No. 3 (handing exhibit to witness).

A This is a charge ticket which I made for the supplies to the "Mountaineer."

Q Where was that charge ticket made?

A It was made in the Marine Hardware Company's store, and the goods were loaded on the truck at the Marine Hardware Company's warehouse and delivered over the wharf at the fish market to the boat "Mountaineer". I supervised the delivery of the goods and obtained the signature on the duplicate charge ticket from Mariana for these goods.

Q BY MR. OVERTON: Where is that duplicate charge ticket?

A You will find it, I believe, on the exhibit here.

Q BY MR. PHISTER: Do you mean this one here (indicating)?

THE MASTER: You didn't take the signature on the original, but on the duplicate; is that it?

A The charge for the other net that I delivered there myself, the charge ticket was made at the warehouse, and the original charge ticket -- we had the book there; we weighed the net, got the correct weights and all, and made the charge there. The original charge ticket, the net, of \$5,300, bears the signature of Mariana, as I had the charge book at the warehouse where the net was stored and where the boat was brought and delivery made.

Q When you make out the charge tickets you keep the original in the office, do you?

A Yes.

Q And send out with the goods the duplicate?

A Yes. Well, there are two slips follow the goods out.

Q One of them is then delivered with the goods and the other is signed for and returned?

A Yes; that is right.

Q Now take the next item, Libelant's Exhibit No. 4, No. 1064, a charge made by you, and I will ask you to explain how the delivery of those various items was made to the boat (handing exhibit to witness), and what you know of your own personal knowledge to that effect.

A This is an order that was placed with us for the net. The net was put in storage --

Q BY MR. OVERTON: Was it placed with you?

A I received the order from the captain -- Mr. Mariana, -- for the net. The net arrived and was put

in storage by us -- by the Marine Hardware Company -- at the Outer Harbor Dock & Wharf Company.

Q BY MR. VERMILLE: Now you are talking about a net.

A These are the nets.

Q How many nets?

A There is nine bales of net, making up one purse seine.

Q All right; just go ahead and explain.

A This net was stored there and Mariana notified, and he brought the boat "Mountaineer" to the dock and we put the net on board the boat.

Q BY MR. OVERTON: You were present there?

A I was present there and helped them get the net on board, and this is the original charge ticket made out by me, and it is signed by Mariana, as we were using that as our warehouse at that time and were making charges right there, and as we got the weights and made out the charge Mariana signed the original as well as the other two -- the duplicate and triplicate -- on this charge here.

Q BY MR. VERMILLE: You are sure no portion of this net was delivered to Mariana at his house?

A I am sure those nine bales were delivered right on board the ship. I helped them put them aboard.

Q And you never made delivery of any portion of this net to Mariana at his house to work on and make up into a purse seine?

A I did not. Our reason for putting the net in the warehouse and paying storage was so that we

could have it handy and could handle it. We could have the ship come there and get the net and save the trouble of handling it. You see, there was a good many tons of this net, and our own warehouse was too small for it, and we put it where the ships could come after it.

Q BY MR. OVERTON: When did you sever your connection with the Marine Hardware Company?

A June 15, 1921.

MR. VERMILLE: Now in order to save time, your Honor, I think that, instead of going down each one of these other items, I will just ask the witness this question:

Q Do you know of your own actual knowledge whether or not the balance of the statements as introduced in evidence by the libelant - - whether delivery of the goods was made to the boat?

A I do not.

Q Now you stated in your direct examination that the signature on the majority of these statements was made by the master, and that you only obtained the signatures at the time delivery was made to the boat. As a matter of fact don't you ever deliver anything to a party who would come in there to the store and sign your sales slip without seeing them actually go on board the boat?

A I have already stated that small items in many cases are carried out. It wouldn't be advisable to deliver a 10-cent order if the master came in the store and signed for it.

Q Well, we will have to go down these items. What do you mean by small items? 10 cents or up to how much?

A Well, if you came in the store to buy something and it weighed one pound you would take it back to the ship with you. Anything that could be carried easily by hand we didn't make a practice of delivering it. That charge ticket for rope there was not to be carried away easily by hand. This one here (indicating).

Q How do you know? Do you know of your own personal knowledge that was delivered to the boat?

A This one here.

Q What is the number of that - - Exhibit 6?

A The weight on this charge ticket here is 649 pounds. It is signed for by Mariana.

Q Now did you ever know a party to come in the store and sign a sales slip and tell you to deliver it some place?

A On all orders that were to be delivered we didn't receive the signature in the store.

Q Only orders that were carried away?

A That were carried away.

Q Did anybody ever come up to the store with an automobile or truck and put anything in the tonneau and go away with it and sign a sales slip, or does every order go out in your truck that is sent out of the store?

A Why, we have lots of people that haul their own stuff away, that have machines.

MR. VERMILLE: That is all.

REDIRECT EXAMINATION

BY MR. PHISTER:

Q Now that custom you speak of applies particularly to deliveries to boats, does it not?

A It does.

MR. OVERTON: Now we move to strike out the answer on the ground that it is incompetent, irrelevant and immaterial; that it is hearsay, and that it calls for a conclusion of the witness. The mere fact that they may establish a custom does not show delivery to the boat. They must show, as your Honor knows, a definite delivery to the boat, and the mere fact that a clerk or employe is instructed to obtain a signature when he delivers to the boat, particularly in view of Mr. Clarke's testimony already to the effect that things are allowed to go out of the store continually, and are signed for in the store, - - it negatives the custom right there.

THE MASTER: I will grant your motion, but allow it to remain in the record for the purpose of review.

MR. OVERTON: And at the same time we move that all of these slips, with the exception of Libelant's Exhibits Nos. 3 and 4, be stricken out on the same ground. Nos. 3 and 4 are the ones which he testified he actually delivered himself to the boat.

THE MASTER: You haven't closed your case, have you, Mr. Phister?

MR. PHISTER: Well, no, I have not.

MR. OVERTON: Then I will withdraw the motion at this time.

MR. PHISTER: But, so far as that is concerned, we have closed our case except for the redirect examination of this witness, which is going to proceed upon the grounds that I have just indicated.

THE MASTER: Do you want to further examine the witness?

Q BY MR. PHISTER: Now this slip marked Exhibit 14, could that have been carried away from the store (handing exhibit to witness)?

A The weight is 80 pounds.

Q That was undoubtedly delivered by one of your trucks on board the boat?

MR. OVERTON: That is objected to for the same reason. It calls for a conclusion, and is hearsay and incompetent, irrelevant and immaterial.

THE MASTER: The objection is sustained.

MR. PHISTER: The weight of that is 80 pounds, however. The objection was not sustained to that question, was it?

MR. OVERTON: I made no objection to that.

Q BY MR. PHISTER: With respect to this one here, what is the weight and bulk of that item -- Exhibit 11 (handing same to witness)? Can you tell from that?

A Approximately 25 pounds.

Q And this one here, what is the weight and bulk of that? That is marked Exhibit 9 (handing same to witness).

A Approximately 18 pounds.

Q And this one marked Exhibit 7, what is the approximate weight and bulk of that?

MR. OVERTON: We will stipulate that the weights shown on those tags are approximately correct, to save time.

MR. PHISTER: Well, apparently it doesn't state.

A Approximately 80 pounds.

Q BY MR. PHISTER: And this one, Exhibit 6?

A This one is 649 pounds.

Q Now you sometimes make deliveries to customers in the store who may carry away the goods in their own trucks. Is that ever done in the case of fishermen and the masters of fishing boats?

A No, it is not.

MR. OVERTON: We move to strike out the answer on the grounds as previously noted.

THE MASTER: I will grant the motion but allow the testimony to remain in for the purpose of review.

Q BY MR. PHISTER: Now in respect to this particular boat, the "Mountaineer". That is a purse seine fishing boat, is it not?

A It is.

Q Of about what tonnage?

A The boat is between 60 and 70 feet long.

Q It is the sort of boat that you ordinarily deal with in the course of your selling marine nets and marine hardware?

A It is the particular design of a boat and equipped and fitted to handle a net which is called a purse seine.

Q And it is the kind of boat that you personally require the master to receipt for goods purchased at the time the goods are delivered on board the boat?

A We require the signature on all boat deliveries.

MR. OVERTON: Pardon me. Will you read the question?

(Last question read.)

MR. OVERTON: We move to strike out the answer on the same grounds as previously stated.

THE MASTER: Same ruling, but it will be allowed to remain in for the purpose of review. Where is the master of this boat, Mr. Phister?

MR. PHISTER: I haven't any idea.

THE MASTER: Proceed.

MR. PHISTER: Libelants rest. Now on behalf of the intervener San Pedro Grocery & Meat Market I will ask Mr. Felando to take the stand.

* * * * *

CHARLES P. HALFHILL,

a witness called on behalf of the intervener Halfhill Packing Corporation, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VERMILLE:

Q Please state your name.

A Charles P. Halfhill.

Q What is your business and occupation?

A I am secretary and treasurer of the Halfhill Packing Corporation.

Q Intervener in this action?

A Yes, sir.

Q I show you a promissory note dated March 25, 1920, due on or before one year after date, in the sum of \$7,750.00, purporting to be signed by - - who is that signed by (handing paper to witness)?

A That is Mariana.

Q Was he the master and owner of the boat at that time?

A Yes, sir; he is the party we sold the boat to.

Q Is that his signature?

A Yes, sir.

Q Are you familiar with his handwriting?

A Yes.

Q I will ask you if anything has ever been paid on that note.

A Not a cent.

Q Neither principal nor interest?

A No.

Q Has any interest been paid on that note?

A I think not. I couldn't say positively as to that, but he has been a very poor fisherman and his account *has* away over all the time. I don't think anything has ever been paid on it.

Q Well, do you know?

A No, sir. Nothing has been paid on it.

Q I show you a mortgage from Epifanio Marajani to the Halfhill Tuna Packing Company. Was he the master and owner of the boat at that time?

A Yes, sir.

Q And will ask you who signed that?

A Marajani, the same fellow.

Q Is that Marajani's signature?

(Witness comparing same with note).

A Yes, sir.

MR. VERMILLE: We would like to introduce the note and mortgage in evidence, your Honor, to show that it was duly recorded in both Washington and San Pedro at the customs office; and we would like to withdraw them at any time if - -

THE MASTER: They may be received and marked and copies substituted in place of the originals.

Q BY MR. VERMILLE: I will ask you if that boat was the same boat that was libeled - - the boat referred to in the mortgage.

A Yes, sir.

Q BY MR. OVERTON: And that note is the same note as referred to in the mortgage?

A Yes, sir.

MR. VERMILLE: That is all.

CROSS-EXAMINATION

BY MR. PHISTER:

Q Any other mortgage on that boat, Mr. Halfhill?

A Not that I know of.

Q Have you ever seen the record of any other mortgage?

A No, sir.

MR. VERMILLE: We object to that, your Honor. If there is another mortgage on the boat the parties should be made parties to this suit.

THE MASTER: Well, he has answered that he did not know.

MR. PHISTER: That is all.

MR. VERMILLE: That is all.

Q BY MR. NIX: At the time this mortgage was given do you know of any other lien or claim upon this boat to the amount of a thousand dollars?

A No, sir.

Q Did you not enter into some kind of an agreement on or about the 6th day of February, 1920, with the Babare Brothers of Tacoma, Washington, relative to the building of this boat?

A We bought the boat from the Babare Brothers.

Q How did you pay for this boat?

A We bought two boats, the "Mountaineer" and the "Western," and the purchase price was \$12,750 each, cash.

Q Did you pay the \$12,750 cash to Babare Brothers for these boats?

MR. VERMILLE: I would like to ask is this cross-examination or is counsel taking the witness on direct?

THE MASTER: He is cross-examining him now. I asked him if he wanted to cross-examine him.

MR. OVERTON: Your Honor, I don't think cross-examination by these parties is proper. They are asserting claims which are paramount to our claim. Our claim cannot affect them in any way if it is allowed. In other words, we come in on a mortgage, while they come in on claims that are paramount to ours. They get the first money out of the boat when it is sold, and

I don't think, under the circumstances, they have a right to contest or question our claims in any way.

THE MASTER: I don't see any objection to their cross-examining him. I think all the parties to a suit have a right to cross-examine a witness put on by anybody. I don't know of any rule of evidence that would prevent that.

MR. OVERTON: I think they have to show some interest in the case to be entitled to cross-examine. As a matter of fact I have no objection to the cross-examination if they will stick to the facts, but I don't want the record cluttered up with a lot of things that are immaterial.

THE MASTER: If you want to cross-examine him I will allow you to do so.

MR. NIX: Well, there is no question about this being a paramount claim. The mortgage is subject to the builder's lien.

THE MASTER: You haven't introduced any evidence to show your claim yet.

MR. NIX: Then I will put the witness on as my witness.

MR. OVERTON: No, we do not admit that the claim of Mr. Nix is a paramount claim.

MR. NIX: Then I will put him on as my witness.

MR. VERMILLE: Before counsel does that, your Honor, I would like to object to it on the ground that the plea is not verified -- the claim -- and move to strike it out.

THE MASTER: Well, now, is it verified or not?

(Counsel and court examine papers).

MR. NIX: Well, if counsel so stipulate I will verify the complaint at this time.

THE MASTER: I will permit you to verify it. I presume you filed it in good faith.

(Mr. Nix signs document.)

THE MASTER: Do you make this witness your witness?

MR. NIX: Yes, I will make him my witness.

C. P. HALFHILL,

recalled as a witness on behalf of the intervener Babare Brothers, testified as follows:

DIRECT EXAMINATION

BY MR. NIX:

Q At the time you entered into this contract with Babare Brothers how much cash did you pay them?

A I think we have a copy of the original instruction that I left there. My memory is not clear on those amounts, but it is on that instruction.

Q The copy says "receipt of \$2000 is hereby acknowledged."

A The arrangement was, when we purchased those boats at those prices, -- you remember the price is \$12,750 each -- well, I know that --

MR. OVERTON: Now, don't testify to anything that is in writing.

Q BY MR. NIX: When you made the final payment was there any amount due to Babare Brothers?

A We instructed the Babare Brothers to collect a certain amount from each fisherman on each boat and

when he had done that to turn the boats over to them and draw on us for the difference.

Q Well, answer the question. Was there an amount due on this boat?

MR. VERMILLE: When?

Q At the time that you made the last payment on this boat. Was there another balance due?

A No. He drew on us for the last payment of the amount of our mortgage.

Q Then the boat was paid for in full at the time of the delivery by you?

A I should think it was, yes sir.

Q But you don't know?

A Well, that was the instruction we left with him.

Q You say the instructions you left with him at the time the boat was to have been delivered by --

A I went up there to Seattle and Tacoma and bought these boats and made the deal and paid a certain payment down, and I came back here and sold them to these fishermen on terms satisfactory to the company, and this mortgage was a part of the purchase price that we had paid in cash and took a mortgage back for \$7,750 on each boat.

Q Is it not a fact that there is another thousand dollars due from the fishermen on this particular boat?

A I learned afterwards that --

MR. OVERTON: Just a minute. We object to that as calling for a conclusion of the witness and hearsay.

THE MASTER: Just testify to what you know of your own knowledge.

Q BY MR. NIX: Do you know of your own knowledge that there was another thousand dollars due on this boat?

A I left Mr. Babare written instructions just what to do and how to handle it.

Q Well, do you know of your own knowledge that there was a thousand dollars due on this boat?

A I heard that the - -

MR. OVERTON: Just a minute. I move to strike out the answer.

MR. VERMILLE: Do you know of your own personal knowledge?

MR. OVERTON: We move to strike out the answer as hearsay and as a conclusion of the witness.

THE MASTER: Well, he has not answered the question. I think he started to answer it and you objected. He said he heard. I think your admonition to him to testify only to what he actually knows of his own knowledge is sufficient.

Q BY THE MASTER: You don't know of your own knowledge whether or not this thousand dollars was still due on that boat, do you?

A No.

Q BY MR. NIX: At the time the boat was delivered what instructions did you give to Babare Brothers with reference to the delivery?

A I was a copy of that instruction right there, I think. That will tell it better than I can remember it.

Q Well, now, did you instruct him to collect a thousand dollars from the master of the boat "Mountaineer" before he delivered it?

A I instructed him to collect \$4500.

MR. OVERTON: Just a minute. We object to that. The witness has testified that those instructions were in writing and we want the writing produced or a copy of it. We will furnish a copy if that is satisfactory to counsel.

THE MASTER: Your objection, then, is on the ground that it is not the best evidence?

MR. OVERTON: Yes.

THE MASTER: The objection is sustained. If you have the writing, that is the best evidence.

MR. NIX: If your Honor please, we will make a motion for a continuance on this matter.

MR. OVERTON: As we said before, your Honor, we think the costs ought to be imposed.

THE MASTER: Well, this matter was referred to me to take testimony and to find out what is due, if anything, on that note, and I think the question of costs should be reserved until that time. I was inclined to impose costs because they were not ready for the hearing.

MR. NIX: The only reason we were not ready, your Honor, is that this man was out of the city, and we understood that he was to be back at this time. That is the reason we entered into the stipulation we did.

THE MASTER: When can you be here again?

MR. NIX: Two weeks from today, your Honor.

(Discussion).

(Stipulation dictated by Mr. Phister: It is stipulated between the parties that the San Pedro Grocery & Meat Market Company may introduce further testimony if so advised, and if they do introduce further testimony they shall stand in the same position as Babare Brothers and Rabasa Brothers.)

(An adjournment was thereupon taken until Friday, December 23, 1921, at 2 o'clock P. M.)

* * * * *

EPIFANIO MARIANI,

called as a witness on behalf of San Pedro Grocery & Supply Company, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PHISTER:

Q What is your name?

A Ephifanio Mariani.

Q You are the master and owner of the boat "Mountaineer," are you not, Mr. Mariani?

A Yes, sir.

Q Did you buy during the year 1920 groceries from the San Pedro Grocery & Meat Market, at the end of the year 1920 and the beginning of the year 1921?

A Yes, sir.

Q Were those groceries delivered to that boat?

A All delivered on the boat.

Q What was the total amount in value of those groceries?

A Well, I will tell you the truth, got to order every time, every time go in store give the order.

Q BY THE MASTER: What was the amount?

Q BY MR. PHISTER: How much do you owe the San Pedro Grocery & Meat Market, for groceries you ordered from them for the boat?

A How much order, how much I owe?

Q How much do you owe them?

A What do you mean?

Q How much money do you owe?

A Oh, money you mean?

Q Yes.

A It is about \$338.00, something like that.

Q That is for groceries delivered?

A Yes; \$338. and something, something like that.

MR. PHISTER: That is all.

THE MASTER: He signed some kind of a note here in this case.

MR. PHISTER: That is on behalf of the Marine Hardware Company. I was going to leave him on the stand and take that up on behalf of the Marine Hardware Company, after they crossexamined him about this. I do not care whether I take it up that way now.

MR. VERMILLE: That is all.

MR. PHISTER: I want to call him as a witness for the Marine Hardware Company.

THE MASTER: All right.

MR. PHISTER: I will call him on behalf of the Marine Hardware Company.

EPIFANIO MARIANI,

called as a witness on behalf of the Marine Hardware Company, having been previously sworn, testified on oath as follows:

DIRECT EXAMINATION

BY MR. PHISTER:

Q Mr. Mariani, you bought some stuff from the Marine Hardware Company, didn't you?

A Yes, sir.

Q You bought some nets and things?

A Yes, sir.

Q Were those things delivered on board the boat? Here are some slips. Here is one: "Marine Hardware Co.," sales slip No. 1065, "Sold to Bt. Mountaineer. Address, E. Mariana."

"700 - 6" 50% cork, \$84.00.

3000 - 5" 100% cork, 360.00.

1300 - 4 oz leads, 175.50.

7 Bbl coal tar, 105.00

3 Bbl pine " 67.50.

90 - 6"x5/8 Br.

purse rings, 81.00."

A Yes, sir.

Q "2 coils 1-3/4 manila rope, \$73.80"

A Yes, sir.

Q "57# 70 fath 5/8 Yacht rope, 31.35.

140# 2-3/4 manila rope, 39.90."

Did you order all that stuff from the Marine Hardware Company?

A Yes, sir.

MR. OVERTON: We want to ask counsel to be careful not to lead the witness, not to ask leading questions. I think it is very important in a case of this kind. We are going to ask, if any are, that they not be answered and not considered.

MR. PHISTER: I will try to be careful. I realize I was leading him, and it is a little hard to examine him.

Q Where did you get that stuff, Mr. Mariani?

A In the store.

Q What store?

A The Marine Hardware Store.

Q Where did it go to?

A Go to boat "Mountaineer".

Q Aboard the boat?

A Yes, sir; taken from warehouse, submarine base.

Q From the warehouse at the submarine base?

A Yes, sir.

Q Where did it go to?

A On the boat.

Q Went on board the boat "Mountaineer"?

A Yes, sir.

Q Here is sales slip No. 1064, apparently all for -- well, the total amount is \$5358.03, dated June 14, 1920; did you ever see that before, that sales slip? Is that your signature down there (handing paper to witness)?

A Signed by me, yes.

Q That is your signature?

A That is mine.

Q Where did you get that stuff?

A This was at the submarine base, in the warehouse.

Q Where was it put?

A Put it on boat "Mountaineer".

Q Whom did you order it from?

A From the Marine Hardware Company.

Q Here is another slip, numbered 1. It says, "1 Gal. 357 paint, \$5.25; ½ Gal. of 357 paint, \$2.75; 1 Gal. of tuna red, \$6.00; 2 quarts of tuna red, \$3.30; making a total of \$17.30; is that your signature on the sales slip?

A Yes, sir.

Q Where did you get that from?

A From the store, the Marine Hardware store.

Q Where did it go to?

A To the boat "Mountaineer".

Q What did you do with it?

A For the painting of the boat.

Q You used the paint on the boat?

A Yes, sir.

Q Here is another slip, No. 1509, for "2 coils 3" 3-ply purse line, at \$162.18; 4 coils 12 Man. rope, \$58.58; is that your signature on that?

A Yes, sir.

Q Where did you get that?

A This is stuff taken from the store, the Marine Hardware Store.

Q You ordered it from them?

A Yes, sir.

Q Where was it taken to?

A To the boat.

Q What boat?

A The boat "Mountaineer".

Q It went on board the boat "Mountaineer"?

A Yes, sir.

Q Here is another sales slip, No. 623, 20 ft. of 1" Med. Hose, \$6.00; 1 female end hose cup, 20 cents; 1 Galv. hose band, 10 cents; 1 1" hose nip, 40 cents; 1 1x $\frac{3}{4}$ galvanized red, 35 cents; 8 hooks, \$2.80; 1 kelp hook, \$1.25; 3 loose hooks, \$3.00; 1 8" block, \$1.98, making a total amount of \$16.08; is that your signature on the sales slip?

A Yes, sir.

Q Where did you get that stuff?

A From the store, the Marine Hardware store.

Q You ordered it from the Marine Hardware store?

A Yes, sir.

Q Where did it go to?

A To the boat "Mountaineer".

Q You know it went aboard the boat "Mountaineer"?

A Yes, sir.

Q Of your own knowledge?

A Yes, sir.

Q Here is another sales slip, No. 607; one brass fog horn, \$1.50; 18 2 brass rings, \$2.70; 2 $\frac{1}{2}$ " long links, \$.40; "making a total of \$4.60.

A That is small stuff.

Q You signed that?

A Yes, sir.

Q That is a total of \$4.60; you signed that sales slip?

A Yes, sir.

Q Whom did you order that from?

A The Marine Hardware store.

Q Where did it go to?

A Aboard the boat.

Q The boat "Mountaineer"?

A Yes, sir.

Q Here is another slip, bearing No. 1058; "15# waste, \$3.75; 6 - 40-watt, 15-volt bulbs, \$2.40; 4 bulb shields, \$2.60," making a total of \$8.75.

A Yes, sir.

Q You signed that sales slip, did you?

A Yes, sir.

Q That is your signature?

A Yes, sir.

Q Whom did you order that from?

A I ordered it from the Marine Hardware Store.

Q Where was that delivered?

A Delivered on board the boat "Mountaineer".

Q It was delivered on board the boat "Mountaineer"?

A Yes, sir.

Q Here is another sales slip, No. 1070; "2 boxes of cartridges, 30-30, \$3.20; 3 Elec. bulk shields, \$.90; making a total of \$4.10.

A The cartridges is all right.

Q You signed that; that is in your handwriting?

A Yes, sir.

Q Did you order that from the Marine Hardware Company's store?

A Yes, sir.

Q Was that delivered on board the boat "Mountaineer"?

A Yes, sir.

Q What did you use it for?

A For the boat.

Q You took it aboard and kept it aboard the boat?

A Yes, sir.

Q Here is another slip, numbered 2269; "four links, \$3.00; 5 long links, \$1.00; 3 doz. 1- $\frac{1}{4}$ " Galv. rings, \$1.20;"

A Yes, sir.

Q "2 6" long pat blocks, \$3.60."

A Yes, sir.

Q 2 No. 7 Galv. eye blocks, \$.50."

A Yes, sir.

Q "1 vise, \$6.50."

A Yes, sir.

Q Making a total amount of \$15.80. You signed that slip too?

A Yes, sir.

Q Where did you order that from?

A The Marine Hardware store.

Q Where was that taken to?

A On board the boat "Mountaineer".

Q It went on board the boat "Mountaineer"?

A Yes, sir.

Q Here is another sales slip, No. 1003; "1 pr port \$.75; 1 only $\frac{3}{4}$ close Galv. nipple, \$.07."

A Something for a pump.

Q "1 female end 1" hose connection, \$.25."

A Yes, sir.

Q "1 only 1" to $\frac{3}{4}$ Galv. nipple \$.35.

A That is small stuff going on the boat.

Q "1 only oil apron, \$1.85."

A Yes, sir.

Q Total amount is \$3.27. You signed that one too?

A Yes, sir.

Q Where did you order that stuff from?

A The Marine Hardware store.

Q Where was it delivered to?

A To the boat "Mountaineer".

Q Here is another sales slip, No. 978; 2- $\frac{1}{2}$ # Mobiline packing, \$5.00."

A Yes, sir.

Q You signed that one too?

A Yes, sir.

Q Did you order that from the Marine Hardware Company?

A Yes, sir.

Q And that was also delivered aboard the boat "Mountaineer"?

A Yes, sir.

Q Here is another sales slip, No. 918; "30# #30 Med. twine, \$26.40; 50# #21 Med. twine, \$44.00; total,

\$70.40." Did you order that from the Marine Hardware Company?

A. The Marine Hardware Store.

Q Where to?

A For the boat "Mountaineer".

Q And it was delivered to the boat "Mountaineer"?

A Yes, sir.

Q Here is another sales slip, No. 1349; "25# of twine, \$22.00;" do you know what that is? 25 pounds of some kind of twine, it looks like, at 88 cents, \$22.00.

A Yes; that was ordered from the Marine Hardware Store for the boat "Mountaineer".

Q And it was delivered on board the boat "Mountaineer"?

A Yes, sir.

Q All this stuff that is included in the slips that I have been asking about, was that used by you on the boat "Mountaineer"?

A Yes, sir.

Q And all used by the boat "Mountaineer"?

A Yes, sir.

Q And is still on board if it has not been worn out?

A Yes, sir.

Q Do you remember signing a note?

A Yes, sir.

MR. PHISTER: We approved this note; that apparently is his signature. That is all.

THE MASTER: Cross-examine.

CROSS-EXAMINATION

BY MR. VERMILLE:

Q Mr. Mariani, are you the owner and master of this boat "Mountaineer"?

A Yes, sir.

Q Where did you get the boat from?

A The boat?

Q Yes.

A From Tacoma, Babare Brothers.

Q When?

A The 3rd.

Q What was the boat built for?

A Tacoma.

Q What was the boat built for?

A The fishing business.

Q What do you call boats of this kind? What are they commonly called; what do you call them?

A Come from Tacoma.

Q What do you call the boats, like your boat?

A You mean name?

Q Yes.

A "Mountaineer."

Q BY THE MASTER: What kind of boat is it?

Q BY MR. VERMILLE: What kind of boat is it, a steamer?

A No; gasoline. I understand broken. I tell truth. Gasoline, 50 horse-power.

Q Do you call this a motor boat?

A What is it?

Q Do you call this a motor boat?

A This is gasoline.

Q A sail boat or a yacht or what?

A No; gasoline boat. This is a fishing boat.

Q Ever called a purse seine boat?

A Yes; purse seine boat, what they call it. I don't know what you mean.

Q How is the boat constructed?

MR. PHISTER: I object to the question as improper cross-examination at this time.

A Wait a minute. You don't know no better than I do. This is 1920.

MR. VERMILLE: Read the question.

(Question read.)

Q How is it built?

A How is it built?

Q Yes; how is it built?

A I don't know what you mean - - is built for purse seine, this boat; this built for fishing business.

Q It is built for fishing business?

A Yes, sir; sure.

Q Could you go out and fish with this boat and use it as a purse seine boat, without a net?

A No.

MR. PHISTER: That is objected to as incompetent, irrelevant and immaterial, not proper cross-examination.

THE MASTER: Objection overruled.

A That is not the same as you go with boat; it is not net, can't go out.

Q BY MR. VERMILLE: What did you intend to do with this boat?

A What is it?

Q When you bought it, what was it built for?

A Have to make a living, for business.

Q Does a purse seine boat have to be constructed in any particular way to handle the nets?

A Well, I make for purse seine boat, make boat for purse seine line, for fishing for tuna, for tuna or for something else.

Q Where were you, up at Tacoma at the time they were building this boat?

A No; built in - - buy before; make - - what do you that, I buy boat. I need boat, because I am not here; right there; I buy in other state, Arizona; my brother buy boat for me; he buy boat for me. I come here. I go to north.

MR. VERMILLE: I think I asked him what it was built for.

THE MASTER: He said it was for fishing, 'to make a living.

Q BY MR. VERMILLE: Could you have used the boat for what it was built for without a net?

MR. PHISTER: That is objected to as incompetent, irrelevant and immaterial.

A No; because for my business it can use no net.

MR. PHISTER: Necessarily it is for fishing.

THE MASTER: I overrule the objection. Answer it.

MR. VERMILLE: Read the question.

(Question read.)

MR. PHISTER: It is also objected to as calling for a conclusion of the witness.

THE MASTER: Objection overruled.

A I like it here, very plain talk. I don't know plain talk. This the big question here.

Q BY MR. VERMILLE: You don't understand my question.

A No; the whole business.

THE MASTER: I don't think he understands you.

Q BY MR. VERMILLE: Did you buy this boat to fish for tuna?

A Yes, sir.

Q Could you have got tuna with this boat without a net?

A No.

Q What kind of a net; what kind of a net do you use?

A Purse seine.

Q Had this boat ever been used for fishing before you bought it?

A No, sir; it is a new boat.

Q A new boat?

A Yes, sir.

Q Did it have a net on it at the time you bought it, in Washington.

MR. PHISTER: That is objected to as incompetent, irrelevant and immaterial; it is immaterial; there is no pleading here setting up any defense other than the denial of our account. It is not really a denial of our account, but it is simply a statement to put

us on our proof, neither admitting nor denying it. It is apparent he is setting up here a special defense.

MR. VERMILLE: He is setting up, stating that he has a maritime libel on it, and we have a right to rebut that.

THE MASTER: Have you attempted to show the net wasn't necessary for the boat or already provided with a net?

MR. VERMILLE: No, that is not what we intend to show. We intend to show that the net was necessary to be used for the boat, that it was intended for it.

THE MASTER: Do you intend to show that there was a net already provided on the boat, that the purchase of this net at this time was not necessary?

MR. VERMILLE: We maintain that this was a brand-new boat; that the net was furnished to this new boat and never had been in business before.

THE MASTER: You claim what was furnished in the original construction of the boat is not subject to a lien at this time.

MR. VERMILLE: Yes.

MR. PHISTER: We maintain that has to be pleaded as a special defense.

THE MASTER: Objection overruled.

CROSS-EXAMINATION

BY MR. OVERTON:

Q When you got the boat in Tacoma, did you come right down to San Pedro with it?

A No; I stop at 'Frisco first.

Q You went to 'Frisco?

A Yes, sir.

Q What did you do in 'Frisco?

A What?

Q I say, what did you do in 'Frisco?

A Stopped in a shop down there, Standard shop.

Q To have some work done?

A Yes, sir; the fly-wheel - -

Q Well, you had some work done?

A Yes, sir.

Q You did not use this boat for fishing until you got to San Pedro?

A No.

Q As soon as you got to San Pedro you went and bought this net?

A Yes.

MR. PHISTER: That is objected to as incompetent, irrelevant and immaterial.

Q BY MR. OVERTON: This purse seine net?

A Yes, sir.

THE MASTER: Objection overruled.

Q BY MR. OVERTON: Then when you got the net you went out tuna fishing?

A No.

Q What did you do after you got the net? You got the net and you put it on the boat?

A Yes, sir.

Q Then you went fishing with the net?

A Yes, sir; go fishing; sure.

Q A purse seine boat like this one is built different from the ordinary fishing boat, isn't it?

A The same thing, I guess.

Q It has got a different kind of winch on it, hasn't it?

A Yes, sir.

Q It has got a big platform on it for a net?

A Yes, sir.

Q A big, broad stern to hold the weight of the net?

A Yes, sir.

Q And the bulwarks?

A Yes, sir.

Q It is built for a big purse seine net?

A Yes, sir.

Q This boat?

A Yes, sir.

Q Where is this net now?

A The net?

Q Yes.

A I expect to have it two years; net is no good; is rotten.

Q Where is it?

A Net is something you put in the water; no good.

Q Answer my question. Where is the net?

THE MASTER: Q Where is the net now?

A Now, I no have it; net put down, down on submarine base, on the bank, leave there, to dry for fixing up, to make dry; the net is all rotten; because I am going to have it for company, the net is left there.

Q BY THE MASTER: Where is that net now?

A Somebody taken off; somebody has taken off, a little down on the bank; somebody take for chicken

yard. A little bit, some is good net, is put on the skiff. The skiff got dumped, broke loose, the whole business. Some is good. The cork, some no good; and somebody come there and steal cork. I tell you the truth.

Q All I want to know is where the net is. You don't know where it is?

A I told you where is net.

Q BY MR. OVERTON: You sold the cork?

A Sold cork; sell it for \$75.00.

Q Where are the corks?

A A young man take off; I don't know where he go.

Q Where were the corks when you sold them?

A What?

Q I say, where were the corks when you sold them?

A Sell it.

Q Where were they when you sold them?

A Come in man down there, if I want to sell them old corks, and I better sell it then leave it down there.

Q Where did you last see this net; where was it when you last saw the net?

MR. PHISTER: I object to that as incompetent, irrelevant and immaterial.

A Last see it down there in submarine base.

THE MASTER: Objection sustained.

A Somebody live there; somebody take it for chickens, for yard, for fence for chicken.

MR. OVERTON: For this purpose we will make the witness our witness.

Q What did you do with the net line?

A Young man sell it for money.

Q Sold the cork and sold this?

A Somebody put in skiff, come in night time, break line, skiff run up all loose.

Q Where was the net when you last saw it?

A What?

Q Where was the net the last time you saw it?

A Down at the submarine base the last time, looking for it, making dry down there, have to make dry or net be no good, just like silk. Where I go, go in house, no money to pay eats, no money for net.

Q One night, this net you remember on dock of Halfhill Packing Company, on the wharf; do you remember that?

A What?

Q Do you remember this net a long time on wharf of the Halfhill Packing Company, do you remember that?

A Yes, sir.

Q You took it away from there?

A Sure I take it away from there.

Q One night you got it?

A No, not night; got there eight o'clock. I have witnesses there, eight o'clock down there.

Q Eight o'clock in the morning?

A Yes, sir.

Q Whom have you got as a witness?

A I got witnesses. Joe Borisich.

Q Now let me see - -

MR. PHISTER: It is understood the same objecting and the same ruling goes to all this line of questioning.

A Andrew Mariani.

THE MASTER: I don't see the materiality of it.

MR. OVERTON: It is not material in this case. We are going to ask to have it go in anyway, and the reason for it I will explain to you: We have a chattel mortgage on that net, and this witness evidently disposed of it.

THE MASTER: The objection will be sustained, but I will allow it to go in for the purpose of the record. Go ahead.

Q BY MR. OVERTON: What is the name of the witness?

A I don't know exactly what his name is.

Q You don't know the name of the witness?

A No; I ask for no name.

Q Do you know where he lives?

A No, I don't know; I don't know where he live.

Q You don't know where he lives?

A No.

Q Who was with you when you took this net away from the Halfhill wharf?

A What you ask for net? I don't know what you say.

Q I say, when you took this net away from the Halfhill wharf, who was with you?

A With me?

Q Yes. Now answer my question: What men were with you; what men helped you?

A Five men.

Q What were their names?

A His name? I don't know his name.

Q You don't know the name of any one of them?

A I know names, sure.

Q Tell me the name.

A His name is Jimmie Mariani and Frank Mariani.

Q Those two helped you?

A And Andrew Mariani gave me help.

Q Were they all a part of the crew of this boat?

A Yes, sir. I pay to give me help.

Q Where did you take the net? When you took the net from there, from the Halfhill place, where did you go?

A I put on the ground to make dry, two or three times I try to make it dry, to make net dry, to fix it up, then put in warehouse; look no good, leave alone.

Q You were going to put it in the warehouse?

A What?

Q I say, you were going to put it in the warehouse?

A I fix it up. I know sure good net, after cleaning up in other place, other property.

Q What warehouse were you going to put it in?

A Not put in warehouse; on the bank.

Q You intended to put it in the warehouse after fixing it up?

A Let them fix up some place, to put in warehouse or something else, some place.

Q Where did you intend to put it when you got it fixed up?

A Find place for renting it. Net no good. No find it.

MR. OVERTON: That is all.

MR. PHISTER: That is all.

MR. NIX: On behalf of Rabasa Brothers we make this witness our witness.

EPIFANIO MARIANI,

a witness called on behalf of Rabasa Brothers, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NIX:

Q Where were you on or about the 30th day of March, 1920?

A What did you say?

Q Where were you about the 30th day of March, 1920?

A To buy groceries.

Q At Rabasa Brothers in Tacoma, Washington.

A Yes, sir.

Q I will show you these sales slips from Rabasa Brothers Company, Incorporated, general merchandise, Tacoma, 2424 North 30th Street, Gig Harbor, slips Nos. 33, 34, 35, 36, 37, 38, 39, 40 and 44, and slips numbered 1, 2, 3, 4, 5, and 6, and I will ask you to look over these slips and tell the court whether or not you ordered the supplies from Rabasa Brothers.

A Yes, sir; I buy in store.

Q You ordered them in the store?

A Yes, sir.

Q Where were the supplies delivered?

A Delivered to Nick.

Q Where were they delivered to?

A On the boat "Mountaineer".

Q Delivered on the boat "Mountaineer"?

A Yes, sir; in an auto.

Q These supplies were used for the purpose of your intended trip, trip from Tacoma, Washington, to San Pedro, California?

A Yes, sir; from Tacoma, Washington, to San Pedro, California.

Q Now with reference to the store; first, where is the store located; near the wharf?

A No; it is about two blocks.

Q Two blocks?

A Two blocks.

Q Can you see the boat from the store practically?

A What?

Q Can you see the boat from the store practically?

A No, cannot see store; wharf like that, one block up and one go this way (indicating).

Q You look those over, each slip, each item, and tell the court whether or not you actually received this amount of goods from Rabasa Brothers and if same were delivered on board the boat "Mountaineer"?

A Yes, on board; bring them aboard.

Q How much do you as captain of the boat, "Mountaineer", or does the boat "Mountaineer", owe Rabasa

Brothers, for merchandise or supplies furnished the boat?

MR. VERMILLE: If your Honor please, I desire to object - - that is all right; he can answer how much.

A That is supplies, for supplies in the kitchen?

MR. NIX: How much money do you owe them, or does the boat?

A \$481. something, something like that money.

Q None of this was paid to Rabasa Brothers?

A No; I pay no penny.

MR. NIX: I would like to offer these as exhibits A and B of Rabasa Brothers.

THE MASTER: Let them be received and marked Rabasa Brothers Company Exhibits Nos. 1 and 2.

MR. NIX: That is all.

MR. PHISTER: That is all.

MR. VERMILLE: That is all.

THE MASTER: Do you want to cross-examine?

MR. VERMILLE: No.

MR. NIX: In the case of Babare Brothers I will make him my witness.

THE MASTER: I thought that was Babare Brothers.

MR. NIX: That was Rabasa Brothers.

THE MASTER: Let him take the stand again.

EPIFANIO MARIANI,

called as a witness on behalf of Babare Brothers, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NIX:

Q How much did you contract to pay for the boat "Mountaineer"?

A Contract for five thousand, my contract.

Q How much?

A The whole pay, \$12,750.00.

MR. PHISTER: We object to the introduction of any testimony on this claim, because it doesn't state facts sufficient to constitute a libel.

MR. NIX: It is a claim.

THE MASTER: I overrule the objection at the present time. You may thrash it out later on.

MR. NIX: Read the question.

(Question read.)

A \$12,750.00.

Q Who built this boat "Mountaineer"?

A Babare Brothers.

Q Of Tacoma, Washington?

A Yes, sir.

Q How much, if anything, do you owe Babare Brothers on the insurance?

A Babare Brothers - -I don't know.

Q Didn't they obtain the insurance for you when you came down to San Pedro?

A I don't know.

Q How much, if anything, do you owe Babare Brothers on account of the building of this boat?

A \$1,000 to be more, I pay.

Q And there is \$1,000. due Babare Brothers on

account of the boat "Mountaineer", for the building of the same?

A I don't understand you.

Q There is \$1,000. due Babare Brothers on account of the building of the boat "Mountaineer"?

A Yes, sir.

MR. OVERTON: We object to that as leading.

THE MASTER: Objection sustained. Ask him what is the balance due.

MR. NIX: I did, your Honor; and that was just merely repetition. He stated that there was a little over \$1,000. due. I wanted the amount more clearly for the benefit of the record.

THE MASTER: Repeat that question. Ask him what the balance was.

Q BY MR. NIX: What is the balance due Babare Brothers on account of the building of the boat, on account of building it, approximately?

A The balance, you mean to pay more?

Q For the building of the boat.

A Altogether?

Q Yes.

A No.

Q No, the balance that is not paid?

A \$1,000.

Q \$1,000?

A Is not paid; yes, sir.

MR. NIX: That is all.

THE MASTER: Now you can cross-examine.

CROSS-EXAMINATION

BY MR. VERMILLE:

Q Did you buy that boat from Babare Brothers or the Halfhill Packing Company?

A What?

Q Did you buy it from the Halfhill Packing Company?

A Babare Brothers.

Q I don't believe you understood what I said. Did you have a contract with the Halfhill Packing Company?

A Yes, sir.

Q To buy this boat?

A Well, I don't know what you mean.

Q Did you have a contract with the Halfhill Packing Company to buy this boat?

A No; just get me for boat \$7,750; I buy it.

Q Did you buy the boat from the Halfhill Packing Company or from Babare Brothers?

A From Babare.

Q Whom did you buy the boat from?

A From Babare.

Q Did you have a contract with the Halfhill Packing Company to buy the boat from them?

A No, I have no contract, because, I tell you before, I am not here; my brother buy boat for me.

Q Whom did he buy the boat from, the Halfhill Packing Company?

A He make contract for fishing for me.

Q For whom?

A For the Halfhill Packing Company, draws 7,000 --

Q Now, wait a minute. He made the contract with the Halfhill Packing Company to fish, did he?

A Yes, sir.

Q Who was going to buy the boat, the Halfhill Packing Company or he?

A I am, I guess.

Q Did he have any money to buy the boat with, if you know?

A Give him \$7,000.

MR. VERMILLE: Suppose we save time, if your Honor please.

Q I ask you if that is your signature.

A This is my brother's, buy for me.

Q Bought it from you?

MR. PHISTER: Bought it for you.

MR. VERMILLE: We will introduce the contract in evidence and ask leave to withdraw it.

THE MASTER: Read it in evidence, if you want to. It will be introduced and you can read it into the record and withdraw it.

Q BY MR. VERMILLE: Is that your

A No, because no write, my brother, he don't write, he cannot write, my brother.

(Short interruption.)

THE MASTER: Proceed, Mr. Vermille.

Q BY MR. VERMILLE: Do you know whose signatures those are?

A No.

Q Do you know those people?

A No.

Q You say your brother bought the boat?

A Yes, sir; for me.

Q From the Halfhill Packing Company.

A Told him to buy for me. I don't know where he buy. I know him buy from Babare Brothers.

Q You did not buy the boat yourself; your brother bought it for you?

A My brother buy for me.

Q Your brother bought it for you?

A Bought for me. I buy from Babare Brothers.

Q Just a minute now.

A All right.

THE MASTER: Just a minute. Let me ask you a question. Who made the contract with Babare Brothers to build the boat?

A I guess nobody.

Q Nobody?

A No; I guess, just Babare Brothers built for themselves.

Q Who made this agreement that is set out in your libel?

A I don't know, agreement for making. I know my brother make contract just for me, before coming in to San Pedro, Halfhill Packing Company make contract, done it for me.

THE MASTER: The specifications you set out here in your agreement is signed by the Halfhill Packing Company and Nick Babare; is that the specification for the building of this boat?

MR. NIX: As I understand it, that is the specification for the building of that boat, and the agreement leading up to it, I don't know anything about that.

THE MASTER: I thought usually the specifications were signed by the same party that signed the contract for the boat. That is what you set out here -- the Halfhill Packing Company.

MR. NIX: We maintain there is \$1,000 due for the building of the boat. We put this witness on the stand to prove that there is \$1,000 due Babare Brothers for the building of this boat.

THE MASTER: All right. Proceed.

MR. VERMILLE: That is all.

CROSS EXAMINATION

BY MR. PHISTER:

Q At the time you got that boat, were there any knives or forks aboard it when you first got her?

A What is it?

Q Where was the boat delivered to you, Mr. Mariani; where did you first go aboard the boat?

A What do you mean?

Q On the boat "Mountaineer"?

A Go first?

Q Where did you first go aboard the boat "Mountaineer"? What I mean is, was it in San Pedro or up north?

A Built in the north.

Q Is that when you first went aboard her?

A Yes, sir; first went aboard her, right south of Babare Brothers.

Q Were there any cooking utensils aboard her at all?

A No, sir; nothing at all; it was all empty, all empty.

MR. PHISTER: That is all.

MR. VERMILLE: That is all.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE	:	
COMPANY, a Corporation,	:	
Libellant,	:	
	:	
VS.	:	
	:	
GASOLINE LAUNCH	:	BOND ON APPEAL
"MOUNTAINEER,"	:	AND TO STAY
Respondent,	:	EXECUTION.
	:	
HALFHILL PACKING	:	
CORPORATION, a Cor-	:	
poration, et al,	:	
	:	
Intervenors.	:	
	:	

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Fidelity and Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland and duly organized to transact a surety business in the State of California,

is held and firmly bound unto *unto* the Halfhill Packing Corporation, a Corporation, to Babasa Brothers Company, a Corporation, and to Mitchell Marincovich, et al, doing business under the firm name and style of the San Pedro Grocery and Meat Market, their heirs, executors, administrators and assigns in the sum of Two hundred and fifty dollars (\$250.00) for the payment of which sum well and truly to be made, the undersigned acknowledges itself just bound.

The condition of the above obligation is such that whereas the Marine Hardware Company, a Corporation, *appellant* herein, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the District Court of the United States for the Southern District of California, bearing date of 18th August, 1922, rendered in the above entitled cause, in which the said Marine Hardware Company, a Corporation, is the libellant, and the said Halfhill Packing Corporation, a corporation, and others are interveners against the said Gasoline Launch "Mountaineer."

NOW, THEREFORE, if the above named appellant, Marine Hardware Company, a Corporation, shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect, and

WHEREAS, the said Marine Hardware Company, a Corporation, desires, during the process of such appeal, to stay the execution of the said decree of the

District Court, which said decree orders the said Gasoline Launch "Mountaineer" to be sold.

NOW, THEREFORE, the undersigned, the said Fidelity and Deposit Company of Maryland, does hereby acknowledge itself to be held and firmly bound unto the said parties hereinabove first named, their heirs, executors, administrators and assigns, in the further sum of Fourteen thousand, seven hundred and fifty dollars (\$14,750.00), for the payment of which sum well and truly to be made, it acknowledges itself justly bound.

The condition of said obligation is such that if the above named *appellant*, Marine Hardware Company, a Corporation, shall abide by and perform whatever decree may be rendered in this case by the Circuit Court of Appeals of the United States for the Ninth Circuit (to which court said appeal is taken), or on the mandate of said Circuit Court of Appeals by the court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated this 25th day of August, 1922.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

By W M Walker

ATTEST:
R. W. Stewart

Its Attorney in fact.

Agent.

Examined and recommended for approval as provided in rule 29.

LOUCKS & PHISTER,
By Montgomery Phister

Proctors for Appellant.

I hereby approve the foregoing bond.

Dated the 25 day of Aug 1922

Trippet
Judge or Clerk

State of California, }
County of Los Angeles. } ss.

On this 25th day of August, 1922, before me, 28th I. C. Swain, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. M. Walker and R. W. Stewart known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as principal and their own names as Attorney-in-Fact and Agent, respectively.

(Seal)

I. C. Swain

Notary Public in and for the State of California,
County of Los Angeles.

[Endorsed]: No. 1027 IN THE United States District Court Southern District of California Southern Division MARINE HARDWARE COMPANY, a Corporation, Libellant *vs.* GASOLINE LAUNCH

"MOUNTAINEER" Respondent, BOND ON APPEAL AND TO STAY EXECUTION. FILED AUG 28 1922 CHAS. N. WILLIAMS, Clerk By L. J. Cordes *Received copy of the within..... this.....day of.....192...*

.....Attorney.. for Libellants
LAW OFFICES LOUCKS & PHISTER MARINE BANK
BUILDING SAN PEDRO, CALIFORNIA *Attorneys*
for Libellant

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

o o o o o o o o o o o o o o o o o o

MARINE HARDWARE	:	
COMPANY, a corporation,	:	
Libellant,	:	
VS.	:	
	:	
GASOLINE LAUNCH	:	
"MOUNTAINEER,"	:	NOTICE OF APPEAL
Respondent,	:	
	:	
HALFHILL PACKING	:	
CORPORATION, a Cor-	:	
poration, et al,	:	
Intervenors.	:	

To the Halfhill Packing Corporation, a Corpora-
tion, and to Messrs. Overton, Lyman & Plumb, its
proctors; and to Babasa Brothers Company, a Cor-
poration, and to Messrs. Smith & Nix, their proctors;
and to Mitchell Marincovich, et al, co-partners, doing

business under the firm name and style of the San Pedro Grocery and Meat Market, and to A. L. Baldwin, their proctor; and to Charles N. Williams, Esquire, Clerk of the District Court of the United States, in and for the Southern District of California, Southern Division. You and each of you will please take notice that the Libellant, Marine Hardware Company, a Corporation, hereby appeals from the Final Decree made and entered herein on the 18th day of August, 1922, and from the whole thereof to the next United States Circuit Court of Appeals for the Ninth Circuit to *the* holden in and for said Circuit at the City of San Francisco, in the Northern District of California.

Dated this 25th day of August, 1922.

LOUCKS & PHISTER,

By Montgomery Phister

Proctors for Libellant.

[Endorsed]: Original No. 1027 In Admiralty IN THE United States District Court Southern District of California Southern Division MARINE HARDWARE COMPANY, a Corporation, Libellant *vs.* GASOLINE LAUNCH "MOUNTAINEER" Respondent NOTICE OF APPEAL. Received copy of *the within* notice this 25 day of Aug 1922. Smith and Mix Overton, Lyman & Plumb A. W. Baldwin, FILED AUG 25 1922 CHAS. N. WILLIAMS, Clerk By W. J. Tufts Law offices LOUCKS & PHISTER Marine Bank Building San Pedro, California. Attorneys for Libellant

IN THE DISTRICT COURT OF THE UNITED
STATES, IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE	:	
COMPANY, a corporation,	:	
Libellant and Appellant,	:	
VS.	:	
GASOLINE LAUNCH	:	STIPULATION FOR
"MOUNTAINEER,"	:	RECORD ON
Respondent,	:	APPEAL
HALFHILL PACKING	:	
COMPANY, a Corpora-	:	
tion, et al,	:	
Appellees.	:	

WHEREAS, the Appellant desires to review particularly the decision of the District Court holding that a part of the materials and supplies furnished by the Marine Hardware Company, a Corporation, were a part of the original equipment of the gasoline launch "Mountaineer," and, therefore, the said Marine Hardware Company did not have a Maritime Lien for a part of the materials and supplies so furnished and delivered, and

WHEREAS, a great part of the record and of the evidence introduced in the lower court has no bearing upon the question, and

WHEREAS, it is the desire of the parties hereto to shorten the record as much as is consistent with the presenting of the matter above referred to,

IT IS THEREFOR STIPULATED AND AGREED that the record on appeal shall contain only the following papers and testimony: The Libel of the Marine Hardware Company, a Corporation, and the monition issued thereon; the libel in intervention of the Halfhill Packing Company, a Corporation, the order for reference, the findings of fact and conclusions of law of the Special Master, the Notice of filing the Special Master's Report, the exceptions to the report of the Special Master filed on behalf of the *Libelant*, the Order overruling the exceptions to the Report of the Special Master, the opinion of the Court thereon, this Stipulation, the assignment of errors, and the following testimony:

The testimony of C. E. Taylor, the testimony of Roger Clark, the testimony of E. Mariani, the testimony of C. P. Halfhill and all of the exhibits introduced by either party during the testimony of said witnesses including the contract between the Halfhill Packing Company and the Intervening *Libelant*, Barbara Brothers, for the building of the vessel, and

IT IS FURTHER STIPULATED, that the following parts of the record may be omitted:

Order continuing return day, order allowing intervention of San Pedro Grocery & Meat Market, libel in intervention of Rabasa Brothers, libel in intervention of Babara Brothers Company, notice of motion for reference, order of submission and the following testimony:

L. S. Nix, August Felando, Paul Bogdanich, and the testimony of Anton Briagevich, together with the exhibits introduced by any party during their testimony. It is understood and stipulated that the matters and things excluded from the record do not have any bearing upon the libel of the Marine Hardware Company, a Corporation, and further, that the record contains full, true and correct statement of all the pleadings, orders, decrees, opinions and testimony in any way *effecting* the libel of the Marine Hardware Company, a Corporation, and the defense made thereto by the Halfhill Packing Company, a Corporation, towit: That said materials and supplies consisting of the purse *sein* net so furnished were in effect materials and supplies which constituted a part of the original equipment of said vessel to enable it to enter upon the kind of business and navigation intended and therefor not a maritime lien.

Dated this 23rd day of October, 1922.

Smith and Nix

Loucks & Phister

A. L. Baldwin

Overton Lyman & Plumb

S. K. Vermille

[Endorsed]: Original. No. 1027 IN THE United States District Court Southern District of California Southern Division MARINE HARDWARE COMPANY, a Corporation, *Libelant* and Appellant. vs. GASOLINE LAUNCH "MOUNTAINEER" Respondent, HALFHILL PACKING COMPANY, a Corporation, et al Appellees. STIPULATION FOR RECORD ON APPEAL FILED OCT 25, 1922 CHAS. N. WILLIAMS, Clerk By L. J. Cordes.

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT OF
CALIFORNIA SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE COM-)	
PANY, a corp.,)	
	)	Libellant,
)	
vs)	
GASOLINE LAUNCH "MOUN-	)	PRAECIPE.
TAINER")	
	)	Respondent,
RABASE BROS. CO., et al.,)	
	)	Intervenors

TO THE CLERK OF THE ABOVE ENTITLED
COURT:

Please prepare certified record on appeal to the Circuit Court of Appeals for the Ninth Circuit in the above entitled action, said record to include judgment roll, etc., as per stipulation signed by all the parties and filed herein. Include therein all papers and testimony named in said stipulation.

Dated this 18th day of October, 1922.

Loucks & Phister

Proctors for Libellants.

[Endorsed]: No. 1027. IN THE UNITED STATES DISTRICT COURT Southern District of California Southern Division MARINE HARDWARE COMPANY, a corporation, Libellants, vs. GASOLINE LAUNCH "MOUNTAINEER" RESPONDENT, PRAECIPE. FILED OCT 25 1922 CHAS. N. WILLIAMS, Clerk. By L. J. Cordes. LAW OFFICES LOUCKS & PHISTER MARINE BANK BUILDING SAN PEDRO, CALIFORNIA Attorneys for Libellant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION,
IN ADMIRALTY.

MARINE HARDWARE COM-)	
PANY, a corporation,)	
Libellant and Appellant,)	
vs)	
GASOLINE LAUNCH "MOUN-	)	CLERK'S
TAINEER"	)	CERTIFICATE
Respondent,)	
)	
HALFHILL PACKING COR-)	
PORATION, a corporation,)	
Claimant and respondent.)	
)	
)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing pages, numbered from 1 to inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the libel, monition, libel in intervention, minute order referring cause to special master, findings of fact and conclusions of law, notice of signing and filing report, exceptions, points and authorities on exception, minute order overruling exceptions, final decree, opinion, assignment of errors,

testimony C. E. Taylor, Roger Clarke, Charles P. Halfhill, Epifanio Mariani; bond on appeal, notice of appeal, stipulation for record on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of our Independence the One Hundred and Forty-seventh.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of California.

By

Deputy.

